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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 76.

AMELIA C. TRAVERS, CHARLES E. TRAVERS, JOHN H. TRAVERS, JOSEPH TRAVERS, JAMES W. TRAVERS, AND KATE M. M. OWENS, APPELLANTS,

vs.

MARIA L. REINHARDT, LOUIS F. REINHARDT, MARGARET M. MITCHELL, ELIZABETH MITCHELL, MARY L. WALLIS, SAMUEL WALLIS, ALICE V. ROHRER, WILLIAM H. ROHRER, SIDNEY MITCHELL, ANNIE MITCHELL, ANNIE E. TRAVERS, AND "THE SISTERS OF THE VISITATION," A CORPORATION.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 10, 1905.

(19,839.)

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In the Court of Appeals of the District of Columbia.

AMELIA C. TRAVERS ET AL., Appellants,
vs.
MARIA L. REINHARDT ET AL. } No. 1525.

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a Supreme Court of the District of Columbia.

AMELIA C. TRAVERS and CHARLES E. Travers, Complainants,
vs.
JOHN H. TRAVERS, KATE M. TRAVERS, Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation," a Body Corporate, Defendants. } No. 21484. In Equity.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill of Complaint.*

Filed June 8, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, AND CHARLES E. TRAVERS, Complainants,
vs.
JOHN H. TRAVERS, KATE M. TRAVERS, JOSEPH TRAVERS, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation", a body corporate, Defendants

Equity No. 21484 Docket 48

To the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

The complainant complains as follows:

First: That they are citizens of the United States, residing in the District of Columbia and sue as follows: The said Amelia in her own right and with reference to her sole and separate property, and the said Charles E. as husband of the said Amelia.

2 Second: The defendants John H. Travers and Kate Travers his wife are residents of Baltimore, Maryland, the defendants Joseph Travers and Mary E. Travers his wife, are residents of Howard County, Maryland, the defendants James W. Travers and Mabel Travers his wife and Kate M. M. Owens are residents of Laurel, Maryland, the defendants Mary L. Wallis and Samuel Wallis her husband are residents of the District of Columbia, the defendants Alice V. Rohrer and William H. Rohrer her husband are residents of Altoona, Pennsylvania, the defendants Sidney Mitchell and Annie Mitchell his wife are residents of Minneapolis, Minnesota, the defendant Annie E. Travers is a resident of Philadelphia, Pennsylvania, the defendants Sidney Travers, Maria L. Reinhardt and Louis F. Reinhardt her husband, Margaret M. Mitchell and Elizabeth Mitchell are residents of the District of Columbia, all of said defendants being citizens of the United States. The defendant "The Sisters of the Visitation" is a corporation under the laws of the United States, having its habitat in the District of Columbia.

All of said defendants are sued in their own right, and all the natural persons to this suit are adults.

Third: The complainants Charles E. Travers, and the defendants John H. Travers, Joseph Travers, James W. Travers, Sidney Travers and Kate M. M. Owens, are the children and only heirs-at-law of Elias Travers, late of Prince George's County in the State of Maryland, deceased. The defendant Maria L. Reinhardt is the daughter and only heir-at-law of Mary Wynne deceased.
3 The defendants Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer and Sidney Mitchell are the children and only heirs-at-law of Sydney Virginia Mitchell, deceased, and are also devisees and beneficiaries under the will of Elizabeth Travers, deceased. The defendant Annie E. Travers is a legatee and the defendant "The Sisters of the Visitation" is devisee and beneficiary under said will of Elizabeth Travers, deceased.

Fourth: Joseph Travers late of St. Mary's County, Maryland, died intestate on the 12th day of September 1882, leaving his widow Mary Travers now deceased, but no child or children or descendant of any child or children him surviving; and his brothers Elias Travers and James Travers, and his sisters Sydney Virginia Mitchell, Mary Wynne and Elizabeth Travers were his only heirs-at-law.

Fifth: That James Travers departed this life at Point Pleasant, in the State of New Jersey, in the month of October 1883, without widow or lawful child or children or descendants of a child or children surviving him and leaving a paper-writing dated the fifth day of October 1883 purporting to be his last will and testament, a copy of which is duly recorded in the Office of the Register of Wills of the District of Columbia in Will Book 21, folio 162, which last will and testament contains the following devise, to wit, "Item. My just debts and funeral expenses being first paid, I hereby give, devise and bequeath in the manner following that is to say:

First: To my brothers and sisters all my interest and property however held in the District of Columbia". That the brother
4 and sisters surviving him were the said Elias, the said Sydney Virginia Mitchell, Mary Wynne and Elizabeth Travers, and at the time of his death these persons constituted his heirs-at-law. That by said devise the said Elias Travers, Sydney Virginia Mitchell, Mary Wynne and Elizabeth Travers took as tenants in common, in equal shares, whatever interest and property in the District of Columbia the said testator was seized of at the time of his death subject to disposition by his said will.

Sixth: That the said Elias Travers died intestate on the 29th April 1887; the said Mary Wynne died intestate on the 7th February 1892; the said Sydney Virginia Mitchell died intestate on the 17th of August 1895. The said Elizabeth Travers died on the 14th October 1897, leaving a last will and testament dated the 30th December 1894, which has been duly admitted to probate and is of record in the Office of the Register of Wills for the District of Colum-

bia, in which the defendants Annie E. Travers, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer, Sidney Mitchell and "The Sisters of the Visitation" are legatees, devisees and beneficiaries. That by virtue of a certain agreement between the said beneficiaries and the children of said Elias including the complainant Amelia and a decree of the Probate Court in pursuance thereof dated the 8th day of June 1900, the complainant Amelia and the children of said Elias except Charles E. are vested with an undivided one-sixth ($\frac{1}{6}$) interest and estate in all the property, real, personal and mixed passing or to pass under the said last will and testament of the said Elizabeth Travers, deceased, or of which she died seized and possessed.

5 Seventh: The complainant Amelia as alienee of her said husband is seized and possessed in fee simple in her own right, as her sole and separate property including the rent thereof, of all the right, title and interest in the estate and property of which her said husband became possessed as one of the children and heirs-at-law of Elias Travers, deceased, and also of an interest in the estate of said Elizabeth Travers, deceased, under the agreement and decree referred to in the sixth paragraph of this Bill.

Eighth: The complainant Amelia as alienee as aforesaid, and the defendants John H. Travers, James W. Travers, Joseph Travers, Sidney Travers and Kate M. M. Owens by reason of the death of the said Joseph Travers, James Travers and Elias Travers as aforesaid and the agreement and decree in regard to the estate of Elizabeth Travers as aforesaid, are seized of certain interests as tenants in common in *all* the following described real estate in the city of Washington in the District of Columbia, to wit:

All of original Lots four (4) and five (5), the Western fifty (50) feet by the full depth of original Lot three (3), the East half ($\frac{1}{2}$) of original Lot eight (8) and the West thirty-four (34) feet one (1) inch by the full depth of original Lot nine (9), all in Square two hundred and ninety-one (291).

The East half ($\frac{1}{2}$) of original Lot five (5) in Square three hundred and seventy-nine (379).

All of original Lot seventeen (17) in Square thirty-three (33).

All of original Lot numbered five (5) in Square numbered
6 six hundred and fifty-two (652).

Parts of Lots numbered thirteen (13) and ninety-two (92) in Square numbered twelve hundred and seven (1207), beginning for said parts of Lots on Bridge (now M) street one hundred and sixty-two (162) feet West from the Southeast corner of said Square and running thence North one hundred and twenty-nine (129) feet to the North line of said Lot numbered ninety-two (92), thence West forty-two (42) feet seven (7) inches thence South sixty (60) feet to the line of Lot belonging to the Estate of George Hill, Jr., thence East seventeen (17) feet nine (9) inches, thence South sixty-nine

(69) feet to the line of said Bridge (now M) street, thence East along said street twenty-five (25) feet to the said place of beginning.

An undivided one-half (½) right, title and interest in and to the following described real estate, situate lying and being in the City of Washington and District of Columbia and known and distinguished as and being the Westerly twenty-three (23) feet six (6) inches of original Lot numbered three (3) in Square West of Square numbered four hundred and eighty four (West of 484) fronting twenty-three (23) feet and six (6) inches on Massachusetts Avenue and with that width running through to and fronting on North "K" street twenty-three (23) feet six (6) inches.

And the defendants Maria L. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer, Sidney Mitchell, and "The Sisters of the Visitation", by reason of the death of the said Joseph Travers, James Travers, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers as aforesaid, are also seized of certain interests as tenants in common with the other parties to this suit in a portion of the aforesaid described real estate; and claim to be seized of and vested with certain interests as tenants in common with the other parties to this suit in all of said real estate, and the said defendant Annie E. Travers is interested only as legatee under the will of said Elizabeth Travers deceased.

7

Ninth: That the real estate hereinbefore described as being in said Square numbered two hundred and ninety-one (291) was originally owned by Nicholas Travers, deceased, who was the father of the said Elias, Joseph and James Travers and the said Mary Wynne, Sydney Virginia Mitchell, and Elizabeth Travers, all now deceased, and the same passed under his last will and testament and the codicils thereto which were duly admitted to probate and record in this jurisdiction on or about the 14th day of March 1851, a compared copy of which said last will and testament and codicils is filed herewith, marked "Exhibit A. E. T. No. 1" and prayed to be taken and considered as part hereof. That under and by virtue of said last will and testament and codicils the complainant Amelia as alienee as aforesaid and the defendants John H. James W. Joseph and Sidney Travers and Kate M. M. Owens are entitled to have and to hold as tenants in common certain portions of said described real estate independent of the claims of the other parties to this suit, and that as to such portions the same are not susceptible of partition among the said parties in interest as aforesaid, without loss and injury to them, and should be sold and the proceeds of such sale or sales distributed among the said parties concerned according to their respective rights and interests as the Court may find the same to be under the said last will and testament of said Nicholas Travers, deceased.

8

Tenth: The said described real estate is not susceptible of partition in kind among the parties interested therein, without loss and

injury, and the complainants are advised and believe and so aver that they are entitled to have the same sold under the direction of this Honorable Court, and the proceeds of such sale or sales, distributed among the parties concerned according to their respective rights and interests as the same may appear.

Prayer

The complainants therefore pray as follows:

1. That the United States writ of subpœna issue to the above named defendants commanding them to appear and answer the exigencies of this Bill.
2. That all the said described real estate may be sold by trustees under the direction of the Court and appointed for that purpose, and that the proceeds of sale, less proper allowances, be distributed among the parties to this cause according to their respective rights and interests.
3. That for the purpose of ascertaining and determining the respective rights and interests of the parties to this cause in the proceeds of said sales and the distribution of the same said will of Nicholas Travers, deceased, be construed by the Court; all necessary accounts be taken, inquiries made, and if necessary, issues framed and tried under the direction of this Honorable Court.
4. That they may have such other and further relief as
9 the nature of the case may require.

The defendants to this Bill of Complaint are John H. Travers, Kate M. Travers, Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers and "The Sisters of the Visitation" a body corporate.

AMELIA C. TRAVERS
CHARLES E. TRAVERS

EDWARD A. NEWMAN
Solicitor for Complainants.

DISTRICT OF COLUMBIA, *ss:*

We Amelia C. Travers and Charles E. Travers do solemnly swear that we have read the foregoing Bill by us subscribed and know the contents thereof and that the facts therein stated upon our personal knowledge are true and that the facts therein stated upon information and belief we verily believe to be true.

AMELIA C. TRAVERS
CHARLES E. TRAVERS

Subscribed and Sworn to before me this 8th day of June 1900.
J. R. YOUNG, *Clerk*
By L. C. WILLIAMS *Asst Clerk*

10 *Answer of Defendants John H. Travers et al.*

Filed June 11, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL
vs
JOHN H. TRAVERS, ET AL. } Equity No.

To the Supreme Court of the District of Columbia, holding an Equity Court:

The answer of the defendants John H. Travers, Kate M. Travers, Joseph Travers, Mary E. Travers, James W. Travers Mabel Travers, Sidney Travers and Kate M. M. Owens.

These defendants hereby expressly waive service of process and order of publication and submitting themselves to the jurisdiction of this Honorable Court for answer to the bill of complainant against them and others in this Cause Exhibited, or to so much thereof as they are advised it is material for them to make answer to, say:

First. These defendants admit the allegations contained in the several paragraphs of the bill numbered from one (1) to ten (10) inclusive and consent to a decree for the sale of the real estate mentioned and described in said bill of complainant as therein prayed; none of said property is susceptible of partition in kind among the parties interested without loss or injury, and consent that the proceeds of such sale or sales may be distributed among the parties according to their respective rights and interests as may be shown.

Second. And further answering these defendants say that under the will of Nicholas Travers referred to by the Complainants in the ninth paragraph of their bill of complainant, of which will
11 they admit the complainants have filed a true copy by reason of the nature of the devises made by the said Nicholas to his sons Joseph and James, subject to the general provisions contained in said will, the said Amelia Travers as alienee of her said husband and these defendants now answering are entitled as tenants in common to the entire proceeds of sales, less proper allowances of the real estate mentioned in said bill, and thus described, to wit: the west fifty feet front by the depth thereof of original lot numbered three (3); the east twenty-five (25) feet one (1) inch front by the depth thereof of original lot numbered four (4); the east half (½) of original lot eight (8) and the west thirty four (34) feet one (1)

inch front of original lot number nine (9), all in square numbered two hundred and ninety-one (291) and are also likewise entitled to five-eight-s (⅝) of the proceeds of the west sixty-seven (67) feet of lot number five (5) in said square two hundred and ninety-one (291), and as to the remaining property in said bill described they are entitled as tenants in common with all the parties to this cause, according to their respective rights and interests; and the complainants having asked that said will of Nicholas Travers be construed, these defendants do consent and ask that for the purpose of ascertaining and determining the respective rights and interests of the parties to this cause and a proper distribution of the proceeds of sale, said will of Nicholas Travers, deceased, be construed by the Court; all necessary accounts taken, inquir-es made, and if necessary issues be framed and tried under the direction of this Honorable Court to settle any question which may arise in the
12 premises, and that all conflicting claims of the parties as to their respective rights and interests in the proceeds of sales by reason of their respective rights under the will of Nicholas Travers, deceased, be settled in the distribution of the proceeds, said proceeds when brought in, taking the place of said real estate and to that end that all other and further relief as the nature of the case may require be granted and the rights of all parties be protected in the distribution of the proceeds.

Third. These defend*n*ats further answering said bill, say that in a bill filed by the complainants in this cause against the defendants in this Honorable Court, the same being Equity No. 20,426, these defendants in an answer filed thereto, not being then fully advised of their rights in the premises, admitted or did not deny certain allegations in the bill as to the interest of these defend*n*ats and other parties to said cause to certain portions of the real estate therein described which said admissions and statement these defendants now hereby disavow, disclaim and annul so far as the same are inconsistent with the averments contained in this answer.

And having fully answered &c.

JOHN H. TRAVERS
KATE M. TRAVERS
JOSEPH TRAVERS
MARY E TRAVERS
MABEL TRAVERS
SIDNEY TRAVERS
KATE M. M. OWENS
By C H. STANLEY AND
FILMORE BEALL
Solicitors
JAMES W TRAVERS

C H STANLEY
FILLMORE BEALL
Solrs for above named Defendants

13 STATE OF MARYLAND, *Prince George's County,* } *to wit:*

I, one of the above named defendants, James W. Travers, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof and that the facts therein stated of my own knowledge are true and those stated on information and belief I believe to be true.

JAMES W. TRAVERS

Subscribed and sworn to before me this 9th day of June, 1900. Witness my hand and notarial seal

WOODVILLE T. ASHBY
[SEAL.] *Notary Public*

14 *Answer of the Defendants, Sisters of the Visitation.*

Filed June 18, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL.
vs.
JOHN H. TRAVERS ET AL. } Equity No. 21,484.

The separate answer of the defendants, The Sisters of the Visitation to the Bill of Complaint.

This defendant:

(1) Admits the allegations in the first paragraph of the Bill.
(2) Admits the allegations in the second paragraph of the Bill.
(3) Admits the allegations in the third paragraph of the Bill.
(4) Admits the allegations in the fourth paragraph of the Bill.
(5) Admits the allegations in the fifth paragraph of the Bill.
(6) Admits the allegations in the sixth paragraph of the Bill.
(7) Admits the allegations in the seventh paragraph of the Bill
(8) Admits the allegations in the eighth paragraph of the Bill, and further answering says that it is advised and on such advice avers that it is seized of and vested with certain interests as tenants in common with the other parties to this suit in all the real estate mentioned in the Bill.

(9) In answer to the allegations in the ninth paragraph of the Bill, this defendant admits that the real estate in square two hundred and ninety-one (291) was originally owned by Nicholas Travers deceased, and that the same passed under his will and the codicils thereto. It however denies that by virtue of said will and codicils or otherwise however, the plaintiff, with the defend-
15 ants John H., James W., Joseph and Sidney Travers and Kate M. M. Owens are entitled to have and hold certain portions

of the real estate described in the Bill independant of the interests therein vested in this defendant as devisee of Elizabeth Travers deceased, on the contrary it is advised and on such advice avers that it is seized of and vested with certain interests as tenants in common with the other parties to this suit in all the property in said square Two hundred and ninety-one (291) mentioned in the Bill.

This defendant further says, that during the lifetime of Joseph, James and Elias Travers, and a number of years prior to the death of said Joseph Travers, it was agreed between the said Joseph, James and Elias Travers, in order that their three sisters might share in the estate devised by the will of Nicholas Travers, that the several lots which had been devised to them by the will of Nicholas Travers should thereafter be free from the trust provisions sought to be created by said will. That upon the death of said Joseph Travers said agreement was recognized by said James and Elias Travers, and carried into effect, and the lots which had been devised to said Joseph by said will were placed, as the joint and equal property of the heirs of said Joseph, namely James and Elias Travers and their three sisters, in the hands of an agent who collected the rents therefrom and distributed the same equally between said James and Elias Travers, and their sisters Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers. That upon the death of said James Travers said agreement continued to be recognized by said Elias Travers and carried into effect, and the lots which had been devised to said James by the will of Nicholas Travers, were placed as the joint and equal property of the
16 heirs of said James, namely the said Elias Travers and his three sisters, in the hands of the same agent, who collected the rents therefrom, as also the rent from the lots which had been devised to Joseph Travers, and distributed the same equally between Elias Travers, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers. That upon the death of said Elias Travers said agreement continued to be recognized by his heirs and carried into effect, and the lots which had been devised to said Joseph and James Travers by the will of Nocholas Travers, remained as the joint and equal property of the heirs of Elias Travers, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, in the hands of the same agent, who collected the rents therefrom and distributed the same until the death of Elizabeth Travers, equally between the heirs of Elias Travers, Mary Wynne and her sole heir, Sydney Virginia Mitchell and her heirs, and said Elizabeth Travers. That since the death of said Elizabeth Travers said agreement has continued to be recognized by the heirs of Elias Travers, and carried into effect, and the said mentioned lots remained, as the joint and equal property of the heirs of Elias Travers, the heir of Mary Wynne, the heirs of Sydney Virginia Mitchell, and the estate of Elizabeth Travers, in the hands of the same agent, who collected the rents therefrom, and distributed the same as follows: One-

fourth to the heirs of Elias Travers, one-fourth to the only heir of Mary Wynne, one-fourth to the heirs of Sydney Virginia Mitchell, and has retained the remaining fourth as a part of the estate of Elizabeth Travers to await the result of the caveat filed against the probate of her will. That from the time said agreement was
17 made, until within a short time prior to the filing of this Bill, no claim was made by said Elias Travers, or his heirs, to more than one undivided fourth interest in said lots, and within the past year the heirs of Elias Travers have in Equity proceedings filed in this Court between the parties to this cause, admitted that their interest in said lots was such one-fourth interest.

This defendant is advised and on such advice charges that by reason of the matters above set forth, Elizabeth Travers died seized of and entitled to an undivided one-fourth interest in all of said lots, and that such interest is now vested in the beneficiaries under her will, save as to an undivided one-sixth thereof mentioned in the agreement referred to in the sixth paragraph of the will. And this defendant is further advised and on such advice charges that by reason of the matters above set forth, the heirs of Elias Travers are estopped from denying that said Elizabeth Travers died seized of an undivided fourth interest in said mentioned real estate.

It admits that said property is not susceptible of partition amongst the parties in interest, and that the same should be sold and the proceeds of sale distributed amongst the parties according to their respective rights and interests.

(10) This defendant admits that the real estate described in the Bill is not susceptible of partition in kind amongst the parties interested therein. Further answering, this defendant submitting itself to the jurisdiction of the Court, consents that the said real estate be sold by trustees appointed for that purpose, and that the proceeds of sale be distributed amongst the parties to this Cause according to their respective rights and interests. And while surren-
18 dering none of its rights and asserting title to and claiming an interest in all the said mentioned real estate, also consents for the purpose of ascertaining and determining the respective rights and interests of the parties to this cause in the proceeds of sales, that all necessary accounts be taken and inquiries made as to the Court may seem proper and necessary; and that all conflicting claims of said parties as to their respective claims and interests in the proceeds of sale be settled in the distribution of the proceeds, said proceeds when brought in taking the place of said real estate.

SISTER M. VINCENT BAESCHLIN
Superior of the Sisters of the Visitation

GORDON & GORDON
Attys for Sisters of Visitation—
Oath waived
EDWARD A. NEWMAN
Solr. for Complts

Seal The Sisters of the Visitation of Georgetown in the Dist. of Col.

19 *Answer of Defendants Maria L. Reinhardt et al.*

Filed June 22, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL., vs. JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

For answer to the Bill of Complaint filed in the above-entitled cause the defendants Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell and Annie E. Travers state as follows:

1st. They admit the matters and things stated in the first paragraph of the Bill of Complaint.

2nd. They admit the matters and things stated in the second paragraph of the Bill of Complaint.

3rd. They admit the matters and things stated in the third paragraph of the Bill of Complaint.

4th. They believe the matters and things stated in the fourth paragraph of the Bill of Complaint to be true.

5th. Answering the fifth paragraph of the Bill of Complaint they admit that James Travers died in the month of October, 1883, leaving a Last Will and Testament, a copy of which is filed with the Bill, but for greater certainty they refer to the original will, or a duly certified copy thereof, for proof of its contents. They are unable to state whether or not the said James Travers died without leaving a widow or a lawful child or children surviving him, as is
20 stated in this paragraph of the Bill, and if this allegation be material they call for proof thereof.

Sixth. They admit the matters and things stated in the sixth paragraph of the Bill of Complaint.

7th. They admit the matters and things stated in the seventh paragraph of the Bill of Complaint.

8th. Admitting the matters and things stated in the eighth paragraph of the Bill of Complaint, these defendants, however, claim that they, and each of them, are seized of and vested with a certain undivided interest in all of the property in said Bill mentioned and described, as tenants in common with the other parties to this suit.

9th. In answer to the ninth paragraph of the Bill of Complaint these defendants, denying that the plaintiff with the defendants John H., James W., Joseph and Sidney Travers, and Katie M. M. Owens, are by virtue of said will and codicils, or otherwise, seized of certain portions of the real estate described in the Bill, independent of the interests therein vested in these defendants by inheritance and devise, aver and claim that they are seized of and vested with certain interests as tenants in common with the other parties to this suit, in all of the property in Square numbered Two Hundred and Ninety-one (291) mentioned in said Bill.

10th. These defendants, in further answer to said Bill, say that

they are informed and believe, and therefore assert, that during the life-time of Joseph, James and Elias Travers, and for several years prior to the death of Joseph Travers, an agreement was
21 entered into by the said Joseph, James and Elias Travers, by virtue whereof the three sisters of said Joseph, James and Elias Travers, to wit, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, were admitted to share in the estate devised by the will of Nicholas Travers, it being provided in said agreement that the several lots which had been devised to them, the said Joseph, James and Elias Travers, by the will of said Nicholas Travers, should thereafter be free from the trust provisions attempted to be created by said will: and upon the death of said Joseph Travers the said agreement was recognized by said James and Elias Travers and carried into effect, and the lots which had been devised to said Joseph by said Will were treated as the joint and equal property of the heirs of said Joseph, namely, James and Elias, and their three sisters, and placed in the hands of an agent, who collected the rents therefrom and distributed the same equally between the said James and Elias and their three sisters above named. That at the death of said James Travers said agreement continued to be recognized by said Elias Travers, and was given full force and effect, and the lots which had been devised to said James by the will of Nicholas Travers were treated as the joint and common property of the heirs of said James, namely, the said Elias Travers and his three sisters above named, and continued under the control and management of the same agent who collected the rents therefrom, as also the rent from the lots which had been devised to said Joseph Travers, and distributed the same equally between Elias
22 Travers, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers. That the said agreement was continued in force after the death of Elias Travers, and was fully recognized by the heirs and given full effect, and the lots which had been devised to said Joseph and James Travers by the will of Nicholas Travers, were considered and treated as the joint and equal property of the heirs of Elias Travers, Mary Wynne, Sidney Virginia Mitchell and Elizabeth Travers, and continued in the hands of the same agent, who collected the rents therefrom and distributed the same equally between the heirs of Elias Travers, Mary Wynne, and subsequently her heir-at-law, Sydney Virginia Mitchell, and after her death to her heirs, and the said Elizabeth Travers until the death of the said Elizabeth Travers. That after the death of the said Elizabeth Travers said agreement was recognized and continued in force and effect by the heirs of said Elias Travers, and the said property was continued in the hands of the same agent, who collected the rents therefrom and distributed the same among the heirs of Elias Travers, of Sydney Virginia Mitchell, of Mary Wynne, the said agent retaining the remaining fourth as a part of the estate of Elizabeth Travers, to await the result of the caveat filed against the probate of her will. That from the time of said agreement

until a short time prior to the filing of this Bill, no claim was made by said Elias Travers, or his heirs, to any thing more than an undivided one-fourth interest in said lots, and within the past year the heirs of Elias Travers have, in equity proceedings filed in this Court between the
23 parties to this case, admitted that their interest in said lots was a one-fourth interest. These defendants are advised, and therefore aver, that by reason of the foregoing the said Elizabeth Travers, the said Mary Wynne and the said Sydney Virginia Mitchell, died, each of them, seized and entitled to an undivided one-fourth interest in all of said lots, and that such interest is now vested in the heirs of said Sydney Virginia Mitchell, of the said Mary Wynne and in the beneficiaries under the will of Elizabeth Travers, save and except only as to an undivided one-sixth part of the interest of Elizabeth Travers, mentioned in the agreement referred to in the sixth paragraph of the Bill of Complaint. And these defendants are further advised, and therefore aver, that by reason of the matters above set forth the heirs of the said Elias Travers are estopped from denying that the said Mary Wynne, Sidney Virginia Mitchell and Elizabeth Travers died seized respectively of an undivided one-fourth interest in said mentioned real estate.

These defendants admit that the real estate described in the Bill is not susceptible of partition in kind among the parties in interest, and they believe that it should be sold and the proceeds distributed among the parties according to their respective rights and interests, and to that end, while asserting their right, title and interest in all said mentioned real estate, are nevertheless for the purpose of ascertaining and determining the respective rights and interests of the parties to this cause, willing that the property should be sold,
24 and that necessary accounts should be taken, and that the conflicting claims of the parties as to their respective shares and interests in the proceeds of sale, shall be fully made and determined by this Court in this suit, and distribution made accordingly of the proceeds, which when brought in, are to be considered as taking the place of said real estate.

And having fully answered these defendants pray to be hence dismissed with costs.

MARIA L. REINHARDT,
LOUIS F. REINHARDT,
MARGARET M. MITCHELL,
ELIZABETH MITCHELL,
MARY L. WALLIS,
SAMUEL WALLIS,
ALICE ROHRER,
WILLIAM H. ROHRER,
SIDNEY MITCHELL,
ANNIE MITCHELL,
ANNIE E. TRAVERS,
By HAMILTON & COLBERT
Their Attorneys

Oath and personal signature waived.

EDWARD A. NEWMAN,
Solr. for Complts.

25 *Exceptions by Complainants to Separate Answer of The Sisters of the Visitation, a Body Corporate.*

Filed June 29, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET VIR.,
vs.
JOHN H. TRAVERS, ET AL. } In Equity, No. 21484.

Exceptions of the complainants to the separate answer of the defendant The Sisters of the Visitation, a body corporate, to the Bill of complaint is this Cause.

The complainants except to the separate answer of the said defendant The Sisters of the Visitation, a body corporate, as evasive, imperfect and insufficient, and for causes of exception show as follows:

First: For that the defendant has not to the best of its knowledge, information, remembrance and belief set forth in its answer to the 9th allegation of the Bill whether the agreement alleged by the defendants between Joseph, James and Elias was in parol or in writing, the time when said alleged agreement was made, the consideration, if any, therefor, or said alleged agreement as in manner and form as said alleged agreement should be set forth if any such existed.

Second: For that the said defendant in its said answer to the ninth paragraph of said Bill of Complaint has not in alleging that upon the death of the said Joseph said agreement was recognized by the said James and Elias Travers carried into effect &c.;

26 to the best of their knowledge, remembrance, information and belief set forth in what manner and by what means or by what agreement, or at what time, or whether in parol or by writing said alleged agreement was recognized and carried into effect, or in what manner or by what means as it alleges "the lots devised by said will were placed as the joint and equal property of the said James, Elias and their three sisters in the hands of an agent &c", and have not set forth said alleged agreements fully as in manner and form such alleged recognitions and agreements should be set forth if any such existed.

Third: And for that the said defendant has not set forth how said alleged agreement continued to be recognized by the said Elias Travers after the death of James and carried into effect and how, in what manner by what agreement, whetherby parol or in writing

said agreement, as it alleges, or from what time continued to be recognized, and how the said lots were placed as the joint and equal property of the heirs of said James, who, as is admitted by the answer died testate, or how, in what manner whether by parol or by writing, and if by parol or in writing has not set forth any such alleged agreements in manner and form as such alleged recognitions, agreements or authority to the agent should be set forth if any such existed.

Fourth: And for that the said defendant in the said ninth paragraph of its answer alleges that by reason of certain matters by it set up insufficiently in its said answer that the heirs of Elias Travers, who are the co-defendants of said defendant, are estopped from denying the title set up by said defendants while the said
27 alleged facts as stated by the defendant do not in their legal effect, even if true, work an estoppel against the rights of the heirs-at-law of said Elias Travers, of one of whom the plaintiff Amelia is the alienee.

Fifth: And for that the said defendant by its said Answer set up that it is seized as tenants in common to certain interests in all the property known as Square 291 and described in the Bill of Complaint in denial of the allegations of the bill, to which the complainants should not be required to reply or take issue, as the same submits to this Court the question of legal title not within its jurisdiction.

In all of which particulars and for other reasons apparent on the face of the proceedings the complainants except to said answer of said defendant as evasive, imperfect, insufficient, by imperfectly pleading by answer matters of alleged estoppel, acquisition of title from the ancestors in title of complainants and other matters and things not cognizable or properly at issue in this case.

EDWARD A. NEWMAN
Solr. for Complts

28 *Exceptions of Complainants to Answer of Maria L. Reinhardt et al., Defendants.*

Filed July 3, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET VIR., vs. JOHN H. TRAVERS, ET AL. } Equity, No. 21484.

Exceptions taken by the above named complainants to the answer of Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V.

Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell and Annie E. Travers, defendants in this Cause for insufficiency.

First Exception.

For that the said defendants have not in and by their said answer according to the best of their knowledge, remembrance, information and belief answered and set forth whether the said alleged agreement referred to and relied upon in the 10th paragraph of their said answer was in parol or in writing, whether there was any consideration therefor and if any, of what it consisted, nor have they in manner aforesaid set forth in their said answer the time when said alleged agreement was made nor the lots which thereby were to "be free from the trust provisions attempted to be created by the Will" of Nicholas Travers, deceased, nor the said alleged trust provisions in said will, nor set forth said alleged agreement as a whole in manner and form as the same should be alleged and set forth if any such agreement existed.

29 *Second Exception*

For that the said defendants have not in and by their said answer according to the best of their knowledge, remembrance, information and belief answered and set forth whether there was any consideration for the said alleged agreement referred to and relied upon in the 10th paragraph of their said answer, and if any, of what it consisted, nor have they in manner aforesaid set forth in their said answer the time when said alleged agreement was made nor the lots which thereby were to "be free from the trust provisions attempted to be created by the Will" of Nicholas Travers, deceased, nor the said alleged trust provisions in said Will, nor set forth said alleged agreement as a whole in manner and form as the same should be alleged and set forth if any such agreement existed.

Third Exception

For that the said defendants have not in and by their said answer in manner aforesaid answered and set forth how, in what manner and by what means upon the death of Joseph Travers said alleged agreement was recognized by the said James and Elias Travers and carried into effect, nor whether said recognition was in writing or by parol, nor what lots by proper description were treated as the joint and equal property of the heirs of said Joseph as alleged, nor how, by whom in what manner or by what means they were so treated as alleged, nor set forth said alleged recognition or the alleged agreement upon which the same is based in manner and form as the same should be alleged and set forth if they or
30 either of them existed.

Fourth Exception

For that the said defendants have not in and by their said answer in manner aforesaid answered and set forth how, in what manner and by what means whether by parol or in writing said alleged agreement continued to be recognized by the said Elias Travers, at the death of James Travers nor how, by whom, in what manner and by what means the said alleged agreement was given full force and effect, nor what lots by proper description, were treated as the joint and common property of the heirs of the said James, nor how, by whom, in what manner, or by what means they were so treated as alleged, nor set forth said alleged agreement in manner and form as the same should be alleged and set forth if it existed.

Fifth Exception

For that the said defendants have not in and by their said answer in manner aforesaid answered and set forth, how, in what manner, by what means, by whom, or whether by parol or in writing, said alleged agreement was continued in force after the death of Elias Travers; nor how, in what manner, by what means or by whom, whether by parol or in writing, the same was then fully recognized and given full effect, and what lots by proper description were then considered and treated as the joint and equal property of the heirs of Elias Travers, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, nor how, in what manner, by whom or by what means they were so considered and treated
31 as alleged; nor set forth said alleged agreements in manner and form as the same should be alleged and set forth if any such existed.

Sixth Exception

For that the said defendants have not in and by their said answer in manner aforesaid answered and set forth how, in what manner, or by what means, whether by parol or in writing said alleged agreement was recognized and continued in force and effect by the heirs of said Elias Travers after the death of Elizabeth Travers, nor set forth said alleged agreements in manner and form as the same should be alleged and set forth, if any such existed.

Seventh Exception

For that the said defendants have not in and by their said answer in manner aforesaid, answered and set forth any valid or binding agreement or state of facts which could or should estop the complainants or either of them or the heirs of Elias Travers deceased, who are parties to this Cause from denying that the said Mary

Wynne, Sydney Virginia Mitchell and Elizabeth Travers died seized, respectively of an undivided one-fourth interest in the lots referred to in said answer.

In all or some of which particulars the said complainants are advised that the said answer of the said defendants is evasive and insufficient and ought to be amended, and humbly pray that the same may be amended accordingly.

EDWARD A. NEWMAN,
Solicitor for Complainants.

32 *Order to Set Exceptions to Certain Answers for Hearing at Next Special Term.*

Filed August 1, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.,
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

The Clerk will please set down the exceptions filed herein to certain of the answers of the defendants, for hearing at the next Special Term.

HAMILTON & COLBERT,
Solicitors for certain defendants.

33 *Order Granting Leave to Certain Defendants to Amend Answers.*

Filed Nov. 10, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS AND CHARLES E. Travers, Complainants,
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

On motion of the defendants hereinafter named, it is this 10th day of November, A. D., 1900, ordered that the defendants Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, and The Sisters of the Visitation, a body corporate, have leave to amend their answers in this cause as they may be advised, and that the defendant Annie E.

Travers, have leave to file a separate answer, if she so desire, in lieu of the joint answer heretofore filed by her, and from which she is now permitted to withdraw.

JOB BARNARD
Justice

We consent:
EDWARD A. NEWMAN
Solr for Complts
HAMILTON & COLBERT
for defendants named excepting the Sisters of Visitation
GORDON & GORDON
for Sisters of Visitation
FILMORE BEALL,
Solr for some of Defts

Amendments to the Ninth Paragraph of Original Answer of the Defendants The Sisters of the Visitation and Substitution Therefor.

34 Filed November 14, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL. vs. JOHN H. TRAVERS ET AL. } Equity No. 21484.

Further answering the defendant The Sisters of the Visitation, as an amendment to the ninth paragraph of its answer heretofore filed, and in place of said paragraph to said answer says:

In answer to the allegations in the ninth paragraph of the Bill this defendant admits that the real estate in square two hundred and ninety-one (291) was originally owned by Nicholas Travers deceased and that the same passed under his will and the codicils thereto. It however denies that by virtue of said will and codicils or otherwise however, the plaintiff with the defendants John H., James W., Joseph and Sidney Travers and Kate M. M. Owens are entitled to have and hold certain portions of the real estate in the Bill described independent of the interests therein vested in this defendant as devisee of Elizabeth Travers deceased: on the contrary this defendant is advised and on such advice avers that it is seized of and vested with certain interests as tenants in common with the other parties to this suit in all the property in said square Two hundred and ninety-one (291) mentioned in the Bill.

This defendant further says, that during the lifetime of Joseph,
James and Elias Travers, and a short time prior to the
35 death of said Joseph in September, 1882, the said Joseph,
James and Elias Travers in consideration of the love and affection entertained by them for their three sisters, and in order to

avoid litigation over the real estate which had been devised by the will of their father Nicholas Travers and the codicils thereto, and also in order that their three sisters might share in the real estate devised in said will and the codicils thereto, came to an understanding between themselves by virtue of which, the real estate which had been devised to them respectively by the will of their said father and the codicils thereto should thence forth be held by them free from the trust provisions sought to be created by said will and codicils.

This defendant is informed and believes, and on such information and belief avers, that upon the death of said Joseph Travers in September 1882, the said James and Elias Travers in order to carry said understanding into effect, employed the late William B. Webb to reduce the provisions of said understanding into writing, and the said provisions were reduced to a written agreement by said Webb in the month of December 1882 which was signed by said James and Elias Travers. That said paper writing has been lost or mislaid, and though diligent search for the same has been made, this defendant is unable to find the same. That by the provisions of said agreement the lots which had been devised to said Joseph Travers by said will and codicils were in said month of December 1882 placed, as the joint and equal property of the heirs of said Joseph, namely James and Elias Travers and their sisters Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, in the hands of Thomas J. Fisher, a real estate agent, who col-
36 lected the rents therefrom and as provided for in said agreement distributed the same equally between the said James and Elias Travers, and their three above named sisters.

That upon the death of said James Travers in October 1883 the title to the lots which had been devised to him by the will of his father and the codicils thereto, as also his interest in the lots which had been devised to Joseph Travers, devolved upon his heirs and devisees, namely the said Elias Travers and his three above named sisters, and under the provisions of said agreement were placed as the joint and equal property of said Elias Travers and his three above named sisters, in the hands of the same agent or his successors, who collected the rent therefrom, as also the rent from the lots which had been devised to Joseph Travers, and distributed the same equally between said Elias Travers, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers.

That upon the death of said Elias Travers in April 1887, the lots which had been devised to said Joseph and James Travers by the will of their father and the codicils thereto, remained by virtue of the provisions of said agreement as the joint and equal property of the heirs of Elias Travers, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, in the hands of the same agent or his successors, who collected the rents therefrom and distributed the same until the death of Elizabeth Travers, equally between the heirs of

Elias Travers, Mary Wynne and her sole heir, Sydney Virginia Mitchell and her heirs and said Elizabeth Travers.

That since the death of said Elizabeth Travers on the 14th. October 1897, the provisions of said agreement have been carried into effect, and the lots which had been devised to said Joseph and James Travers by the will of their father and the codicils thereto remained as the joint and equal property of the heirs of Elias Travers, the heir of Mary Wynne, the heirs of Sydney Virginia Mitchell and the estate of said Elizabeth Travers, in the hands of the same agent or his successors, who collected the rents therefrom and distributed the same as follows: one fourth to the heirs of Elias Travers, one fourth to the only heir of Mary Wynne, one fourth to the heirs of Sydney Virginia Mitchell, and retained the remaining fourth as a part of the estate of Elizabeth Travers to await the result of the caveat filed against the probate of her will.

37

From the time said agreement was made until the death of said James Travers, and from the death of said James Travers until the death of the said Elias Travers, the validity of said agreement was not questioned by said Elias Travers, and after the death of said James Travers the said Elias Travers made no claim to more than an undivided fourth interest in said lots or in the rents arising therefrom, and from the death of said Elias Travers until within a short time prior to the filing of this Bill no claim has been made by his heirs to more than an undivided fourth interest in said lots or in the rents arising therefrom, and within the past year the said heirs of Elias Travers have in proceedings filed on the Equity side of this Court between the parties to this cause, admitted that their interest in said lots was such one fourth interest.

This defendant is advised and on such advice charges that by reason of the matters above set forth, Elizabeth Travers died seized of and entitled to an undivided one fourth interest in all of said lots, and that such interest is now vested in the beneficiaries under her will, save as to an undivided one-sixth thereof mentioned in the agreement referred to in the sixth paragraph of the Bill, and this defendant is further advised and on such advice charges that by reason of the matters above set forth, the heirs of Elias Travers are estopped from denying that said Elizabeth Travers died seized of an undivided fourth interest in said mentioned real estate.

38

This defendant further admits that said property is not susceptible of partition amongst the parties in interest, and that the same should be sold and the proceeds of sale distributed amongst the parties entitled according to their respective rights and interests.

GORDON & GORDON

Solrs for deft

Seal The Sisters of the Visitation of Georgetown in Dist. of Col.

SISTERS OF THE VISITATION
By SISTER M VINCENT BAESCHLIN,
Mother Superior

I solemnly swear that I have read the amended answer by me subscribed and know the contents thereof, that the facts therein stated of my personal knowledge are true and those stated upon information and belief I believe to be true.

SISTER M VINCENT BAESCHLIN

Subscribed and sworn to before me this 31st day of October, A. D. 1900.

[SEAL] JOHN W. BRAWNER,
Notary Public D. C.

39 *Amended Answer of the Defendants, Maria L. Reinhardt et al.*

Filed December 3, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.,
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

For answer to the Bill of Complaint filed in the above entitled cause, the defendants Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice Rohrer, William H. Rohrer, Sidney Mitchell and Annie Mitchell, state as follows:

1st. They admit the matters and things stated in the first paragraph of the Bill of Complaint.

2nd. They admit the matters and things stated in the second paragraph of the Bill of Complaint.

3rd. They admit the matters and things stated in the third paragraph of the Bill of Complaint.

4th. They believe the matters and things stated in the fourth paragraph of the Bill of Complaint to be true.

5th. These defendants admit the allegations contained in paragraph five of the Bill of Complaint.

6th. They admit the matters and things stated in the sixth
40 paragraph of the Bill of Complaint.

7th. They admit the matters and things stated in the seventh paragraph of the Bill of Complainant.

8th. Admitting the matters and things stated in the eighth paragraph of the Bill of Complaint, these defendants, however, claim that they, and each of them, are seized of and vested with a certain undivided interest in all of the property in said Bill mentioned and described, as tenants in common with the other parties to this suit.

9th. In answer to the ninth paragraph of the Bill of Complaint these defendants, denying that the plaintiff, with the defendants John H., James W., Joseph and Sidney Travers, and Katie M. M.

Owens, are by virtue of said will and codicils, or otherwise, seized of certain portions of the real estate described in the Bill, independent of the interests therein vested in these defendants by inheritance and devise, aver and claim that they are seized of and vested with certain interests as tenants in common with the other parties to this suit, and all of the property in Square numbered Two Hundred and Ninety-one (291) mentioned in said Bill.

10th. These defendants, in further answer to said Bill, say that they are informed and believe, and therefore assert, that during the lifetime of said Joseph, James and Elias Travers an understanding was reached, whereby the right of the sisters of said named parties, to wit: Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, should share in the estate devised by the will of Nicholas Travers, which theretofore had
41 been contested, was admitted, and that shortly after the death of Joseph Travers, and in December, 1882, this understanding was embodied in a written agreement, wherein it was provided that in consideration of love and affection and to avoid any more dispute and litigation, the several lots which had been devised to the said Joseph, James and Elias Travers by the will of said Nicholas Travers, should thereafter be considered freed from the trust provisions created by said will and codicils; that said agreement which was made and entered into in the latter part of December, 1882, was recognized by said James and Elias Travers, and carried into full force and effect, and the lots which had been devised to the said Joseph by the will of said Nicholas Travers, were treated as the joint and equal property of the heirs of said Joseph, namely: James and Elias, and their three sisters, namely: Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers; that the said property was placed in the hands of Thomas J. Fisher and Company, real estate agents in this City, with instructions to collect the rents therefrom, and to distribute the same equally between said James and Elias Travers, and their three sisters above named, which instructions were, and ever have been since, obeyed by said Fisher, and the distribution made accordingly; that at the death of said James Travers said agreement continued to be recognized by said Elias Travers, and was given full force and effect, and the lots which had been devised to said James by the will of said Nicholas Travers, were treated as the joint and common property of the heirs of said James, namely: the said Elias Travers and his three sisters above
42 named, and continued under the control and management of the same agents, who collected the rents therefrom, as also the rent from the lots which had been devised to said Joseph Travers, and distributed the same equally between Elias Travers, Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers. That the said agreement was continued in force after the death of Elias Travers, and was fully recognized by the heirs and given full

effect, and the lots which had been devised to said Joseph and James Travers by the will of Nicholas Travers, were considered and treated as the joint and equal property of the heirs of Elias Travers, namely: Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, and continued in the hands of the same agent, who collected the rents therefrom and distributed the same equally between the heirs of Elias Travers, namely: Mary Wynne, and subsequently her heir-at-law; Sydney Virginia Mitchell, and after her death to her heirs, and the said Elizabeth Travers until the death of the said Elizabeth Travers. That after the death of the said Elizabeth Travers said agreement was recognized and continued in force and effect by the heirs of said Elias Travers, and the said property was continued in the hands of the same agent, who collected the rents therefrom and distributed the same among the heirs of Elias Travers, of Sydney Virginia Mitchell, of Mary Wynne, the said agent retaining the remaining fourth as a part of the estate of Elizabeth Travers, to await the result of the caveat filed against the probate of her will. That from the time of said agreement until a short time prior to the filing of this
43 Bill, no claim was made by said Elias Travers, or his heirs, to any thing more than an undivided one-fourth interest in said lots, and within the past year the heirs of Elias Travers have, in equity proceedings filed in this Court between the parties to this cause, admitted that their interest in said lots was a one-fourth interest. These defendants are advised, and therefore aver, that by reason of the foregoing the said Elizabeth Travers, the said Mary Wynne and the said Sydney Virginia Mitchell, died, each of them, seized and entitled to an undivided one-fourth interest in all of said lots, and that such interest is now vested in the heirs of said Sydney Virginia Mitchell, of the said Mary Wynne and in the beneficiaries under the will of Elizabeth Travers, save and except only as to an undivided one-sixth part of the interest of Elizabeth Travers, mentioned in the agreement referred to in the sixth paragraph of the Bill of Complaint. And these defendants are further advised, and therefore aver, that by reason of the matters above set forth the heirs of the said Elias Travers are estopped from denying that the said Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, died seized respectively of an undivided one-fourth interest in said mentioned real estate. That the agreement hereinbefore referred to was, as these defendants are advised and believe, prepared by William B. Webb, now deceased, and signed by all of the parties in interest, to wit: James and Elias Travers, Mary Wynne and Sydney Virginia Mitchell and Elizabeth Travers.

That these defendants have been unable to find said agree-
44 ment, but in communications from said James and Elias Travers, made not only to these defendants, but to other parties having no interest whatever in this controversy, the said agreement has been referred to and recognized, and the same has

been continuously lived under and given force, effect and virtue by the acts and conduct of the parties thereto.

11th. These defendants admit that the real estate described in the Bill is not susceptible of partition in kind among the parties in interest, and they believe that it should be sold and the proceeds distributed among the parties according to their respective rights and interests, and to that end, while asserting their right, title and interest in all said mentioned real estate, are nevertheless for the purpose of ascertaining and determining the respective rights and interests of the parties to this cause, willing that the property should be sold, and that necessary accounts should be taken, and that the conflicting claims of the parties as to their respective shares and interests in the proceeds of sale shall be fully made and determined by this Court in this suit, and distribution made accordingly of the proceeds, which when brought in, are to be considered as taking the place of said real estate.

And having fully answered these defendants pray to be hence dismissed with costs.

HAMILTON & COLBERT
Attorneys for defendants

Oath and personal signature waived.

EDWARD A. NEWMAN
Solr. for Complts

45 *Separate Answer of the Defendant Annie E. Travers to the Bill of Complaint.*

Filed Dec. 3, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS AND CHARLES E. TRAVERS, complainants, *vs.* JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

The separate answer of the defendant Annie E. Travers to the Bill of Complaint in this cause filed.

For answer to the Bill of Complaint filed in the above-entitled cause, or to so much and such parts thereof as this defendant is advised it is necessary to make answer, she states as follows:

First. That she is the Annie E. Travers named as defendant in said Bill of Complaint, and is, as alleged in the third paragraph thereof, a legatee and beneficiary under the will of said Elizabeth Travers, deceased.

Second. She admits that she is a legatee under the will of the said

Elizabeth Travers, deceased, and claims the legacy therein bequeathed to her, but she says that she has no interest in the Real Estate described in said Bill, except such part thereof as may be legally liable for the payment of her said legacy, and she hereby expressly disclaims any other or further claim, interest or title in and to said Real Estate.

Third. She hereby consents to the sale of that part of said real estate belonging to the estate of Elizabetth Travers, deceased,
46 and the distribution of the proceeds of sale in accordance with the rights of the parties interested therein.

Fourth. She further says that she has no knowledge concerning the other matters and things alleged in said Bill and no interest whatever therein.

And now having fully answered, she prays to be hence dismissed with her costs in this behalf sustained.

ANNIE E. TRAVERS.

HAMILTON & COLBERT
for defendant

Oath waived

EDWARD A. NEWMAN
Solr for Complts

47 *Replication.*

Filed Dec. 13, 1900.

In the Supreme Court of the District of Columbia, the 13th day of December, 1900.

AMELIA C. TRAVERS ET VIR.
vs.
JOHN H. TRAVERS ET AL. } No. 21484. Equity.

The complainants hereby join issue with the defendants.

EDWARD A. NEWMAN,
Solr. for Complainants

48 *Testimony.*

Filed Dec. 17, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21484.

Be it remembered that at an examination of witnesses begun and held pursuant to agreement on the 14th day of December, 1900, at which said examination there were present Edward A. Newman, Esq., Solicitor for the complainants, and Charles H. Stanley, Fill-

more Beall, J. Holdsworth Gordon and Michael J. Colbert, Esqrs., Solicitors for the defendants, personally appeared before me, J. Arthur Lynham, an Examiner in Chancery of said Court, the within named witnesses, who being called for and on behalf of the complainants, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters at issue in the above entitled cause, did depose and say what is hereinafter set out as stated by them.

J. ARTHUR LYNHAM,
Examiner.

49 In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL.
vs.
JOHN H. TRAVERS ET AL.
} Equity No. 21484.

WASHINGTON, D. C., *December 14th, 1900.*

FRIDAY at 1 o'clock p. m.

Met, pursuant to agreement, to take testimony on the part of the complainants in the above entitled cause.

Present: Edward A. Newman, Esq., Solicitor for the complainants, and Charles H. Stanley, Fillmore Beall, J. Holdsworth Gordon and Michael J. Colbert, Esqrs., Solicitors for the defendants.

Whereupon—AMELIA C. TRAVERS, one of the complainants, and a witness in her own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. NEWMAN:

Q. Mrs. Travers, you are the wife of Charles E. Travers?

A. Yes, sir.

Q. And one of the complainants in this suit?

A. Yes, sir.

50 Q. What is your husband's name?

A. Charles E. Travers.

Q. What relation was he to Elias Travers?

A. Son.

Q. How did you acquire your interest in the real estate described in the bill?

A. By deeds which conveyed all my husband's interest in that real estate to me.

Q. You, of course, are familiar with the real estate described in the bill?

A. Yes, sir.

Q. State whether or not it is possible to divide the property in

kind among the parties, according to their various claims, without loss and injury?

A. It cannot be done. Even if there were no dispute as to the interests of the parties it could not be done, because that would require twenty-four equal parts.

Q. Please state the relationship of the parties to this suit to Joseph and James Travers, deceased?

A. Joseph and James Travers were sons of Nicholas Travers, deceased, and both are dead. Joseph died the 12th day of Septemtember, 1882, and James in the month of October, I think, 1883. Joseph died intestate and James left a will, or what purports to be a will, of record in the office of the Register of Wills of this District, and it bears date Ocober 5th, 1883. Joseph left a widow but no children, or the descendants of a child or children surviving
51 him. His widow has since died. James died without a widow or lawful child or children, or descendants of a child or children, surviving him. The heirs at law of Joseph at the time of his death were Sydney Virginia Mitchell, Mary Wynne, Elizabeth Travers, his sisters, and James Travers and Elias Travers, his brothers, all since deceased. The brother and sisters of James Travers, deceased, who were living at the time of his death, were Elias Travers, a brother, and Sydney Virginia Mitchell, Mary Wynne and Elizabeth Travers, his sisters, and these also were his only heirs at law. Elias Travers died intestate on the 29th day of April, 1887, leaving as his children and only heirs at law John H., Charles E., James W., and Sidney Travers, and Kate M. M. Owens. Mary Wynne died intestate and a widow on the 7th day of February, 1892, leaving as her child and only heir at law, Maria L. Reinhardt. Sydney Virginia Mitchell died intestate and a widow on the 17th day of August, 1895, leaving as her children and only heirs at law, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer and Sidney Mitchell. Elizabeth Travers died unmarried and testate on the 14th day of October, 1897. Charles E. Travers is my husband, and Kate M. Travers is the wife of John H. Travers. Mary E. Travers is the wife of Joseph Travers. Mabel Travers is the wife of James Travers. Sidney Travers is unmarried, and Kate M. M. Owens is a widow. Louis F. Reinhardt is the husband of Maria L. Reinhardt. Samuel Wallis is the
52 husband of Mary L. Wallis. William H. Rohrer is the husband of Alice V. Rohrer, and Annie Mitchell is the wife of Sidney Mitchell. Annie E. Travers is interested in this suit only as a legatee under the will of Elizabeth Travers, deceased. My knowledge of these facts is partly personal, and partly based on family history, with which I am familiar.

AMELIA C. TRAVERS.

Subscribed before me this 15th day of December, 1900.

J. ARTHUR LYNHAM,
Examiner.

53 Thereupon CHARLES H. STANLEY, a witness produced on the part of the complainants, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. NEWMAN:

Q. Mr. Stanley, you are a counsellor at law, and solicitor for some of the parties in this proceeding?

A. I am.

Q. Will you kindly state what you know, from your own personal knowledge, and from family history, the relations of the natural persons in this case to each other, and what relation they bear to Joseph, James and Elizabeth Travers and Elias Travers?

A. Well, during the life time of Elias Travers, that is a few years before his death, I was his counsel in a number of matters in Maryland and settled up his estate as his administrator. Elias Travers died without a will, and I was his administrato- The children of Elias Travers are properly stated in this bill.

Q. And as to the respective husbands and wives?

A. The names are properly stated. The children of Elias Travers are properly stated. I knew by family reputation Joseph Travers and James Travers, brothers of Elias, who are both dead. Joseph Travers left a widow, who I believe is now dead. I

54 knew Mrs. Wynne by reputation, and have seen her once or twice. She is now dead, I think. She was a sister of Joseph, James and Elias. Mrs. Sydney Virginia Mitchell I also knew by reputation, and have seen her. She was another sister, and I have always understood that Elizabeth Travers was another sister, but I never saw her personally. Mrs. Mitchell left several children, and I think their names are properly stated in this bill. Mrs. Wynne, I think, left but one child.

Q. And is she married?

A. She has married, very recently, I have heard. I know from the proceedings in this case that she has married a man named Reinhardt. Elias Travers died, I think, the last of April, 1887. Joseph Travers and James Travers both died before he did, Joseph dying first. Mrs. Sydney Virginia Mitchell and Mrs. Wynne died ometime after Elias' death, and Elizabeth died very recently, I have understood; and the brothers and sisters of James at his death were Elias, Elizabeth, Mary Wynne and Sydney Virginia Mitchell. From family history, my information is that James Travers never married, but that Joseph Travers did marry and left a widow and no children, and I am informed that the widow is since deceased. From other information, and from what his children have told me, I have always understood that James never married, and Joseph did marry and had no children. From what I know, and from the pleadings in this case, and

from what I have heard, I believe that the relationship of the parties is properly stated in this bill. From
55 my dealings with the parties, I am satisfied that Joseph Travers died intestate. Elias did. James left a will. I don't know positively as to Mrs. Mitchell or Mrs. Wynne, but my information is that they died intestate. Miss Elizabeth Travers left a will which has been caveated and settled, and I believe Mrs. Mitchell and Mrs. Wynne both died intestate, as has been admitted in the proceedings. Jim left a will. I know the Pennsylvania Avenue property, and I know the property on E street. I don't think I know the other, but I can't conceive that among the persons interested in this case—of their different interests, or want of interest in parts, that there could, by any possibility, be a division in kind and the controversies settled without a sale, either in six, eighteen or twenty four parts and a sale seems to be desired by all parties, no matter what their interests may be.

C. H. STANLEY

Subscribed by the witness this 17th day of December, 1900.

J. ARTHUR LYNHAM

Examiner.

NOTE: The will of Nicholas Travers, deceased, and the codicils thereto annexed (a copy whereof is made an exhibit to the bill) as they appear of record in the office of the Register of Wills of the District of Columbia, are offered in evidence, and it is agreed by counsel that the same may be read from the Liber in which
56 they are recorded at the hearing of this case.

J. ARTHUR LYNHAM

Examiner.

NOTE: The complainants, by their counsel, offer the foregoing testimony in support of the allegations in the bill, that the said real estate is not susceptible of partition without loss and injury, the relationship of the parties and the death of their ancestors, reserving all their rights at the proper time hereafter to introduce further testimony respecting the quantity of interest which they have in said property, and such rights being also reserved by the defendants.

J. ARTHUR LYNHAM

Examiner.

The testimony on the points aforesaid is here announced as closed on both sides, Mr. Colbert and Mr. Gordon and Mr. Beall stating that they have no cross examination to offer.

J. ARTHUR LYNHAM

Examiner.

57 I certify that the foregoing depositions (comprising 22 typewritten pages) were taken down by me in shorthand, as an Examiner in Chancery, from the statements when and as uttered

by the deponents thereof; that the same were thereafter transcribed and reduced by me into print, and thereupon read and subscribed by the respective deponents in my presence.

I further certify that my fee of $15.92 for taking, certifying and returning said depositions has been paid to me by the complainants, and that the same is just and reasonable.

And I further certify that I am not of counsel, nor in anywise interested in this case.

J. ARTHUR LYNHAM
Examiner.

58 *Decree for Sale*

Filed Dec. 17, 1900

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET VIR., vs. JOHN H. TRAVERS, ET AL. } In Equity, No. 21484.

This cause came on to be heard at this term, upon the original bill, the amended and supplemental bill, answers and amended answers, replication, testimony and exhibits and was submitted by Counsel for the respective parties, and it is thereupon upon consideration thereof by the Court this 17th day of December 1900, ordered, adjudged and decreed as follows:

That the real estate and premises described and set forth in the original bill and the amended and supplemental bill in this cause be sold, and that George E. Hamilton, Charles H. Stanley, J. Holdsworth Gordon and Edward A. Newman be and they are hereby appointed Trustees to make sale thereof; and that the course and manner of their proceeding shall be as follows:

59 And upon the ratification of such sale or sales by the Court and full compliance with the terms of sale aforesaid on the part of the purchaser or purchasers, the said Trustees shall convey in fee simple to the purchaser or purchasers of the said real estate or any part or parts thereof, by good and sufficient deed or deeds, duly acknowledged according to law, all the right, title, interest and estate of all the parties to this cause in and to the same, and of all persons claiming or to claim the same by, through or under them or any of them.

And the said Trustees shall hold the moneys arising from such sale or sales and also the securities realized therefrom subject to the order of the Court, after deducting therefrom all costs, expenses and commissions, which the Court shall think proper to allow.

And the said moneys to be produced from said sales shall take the places respectively of the several pieces or parcels of
60 ground so sold.

And the Court hereby expressly reserves for future determination in this cause all questions affecting the rights or claims of any of the parties to this cause to any of said parcels of land or to any interest therein, such questions to be adjudicated in the distribution to be made of the proceeds of the sales hereby directed to be made; all the parties to this cause having agreed that all questions as to the interests respectively of each and every party shall be adjudicated and settled in the distribution of the said proceeds of sales. And that the Auditor of this Court, when said cause shall be referred to him to state the Trustees account and the proper distribution of such proceeds of sales is hereby authorized and directed to make all necessary inquiries and take testimony; to ascertain the rights of all the respective parties both complainants and defendants in any and all such parcels of land, whether under a proper construction of the said will of Nicholas Travers, deceased, or otherwise howsoever, and make distribution of said proceeds of sales accordingly. JOB BARNARD,

Justice.

We the parties to the above entitled cause hereby consent to the foregoing decree.

AMELIA C. TRAVERS
ALICE V. ROHRER
MARY L. WALLIS
ELIZABETH MITCHELL
MARGARET M. MITCHELL
ANNIE E. TRAVERS
CHARLES E. TRAVERS
W. H. ROHRER
SAML WALLIS
M. L. W. REINHARDT
L. F. REINHARDT
SYDNEY MITCHELL
ANNIE MITCHELL
SISTERS OF THE VISITATION
By SR M. VINCENT BAESEHLIN,
Superior.

JOHN H TRAVERS
KATE TRAVERS
JOS. TRAVERS,
MARY E. TRAVERS,
KATIE M M OWENS
JAMES W TRAVERS
MABEL TRAVERS
SID. TRAVERS.

We the Solicitors for the parties to this cause respectively, hereby consent to the forgoing decree

EDWARD A. NEWMAN
Sol'r for Complts
FILLMORE BEALL
C. H. STANLEY.
HAMILTON & COLBERT
for some of defendants
GORDON & GORDON
for Sisters of the Visitation

62 *Suggestion of Death of Sidney Travers.*

Filed May 18, 1901.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET VIR
vs
JOHN H. TRAVERS, ET AL. } No. 21484 Equity.

And now come Edward A. Newman, Solicitor for complainants, and Charles H. Stanley and Fillmore Beall, solicitors for some of the defendants, and suggests the death of Sidney Travers, one of the defendants herein and cause it to be made known to the Court that said Sidney Travers departed this life on the 5th day of May, 1901, in Howard County, in the State of Maryland, intestate, unmarried and without issue, and the complainant Charles E. Travers, and the defendants John H. Travers, James W. Travers, Joseph Travers, full brothers, and Kate M. M. Owens, full sister, are the heirs at law to whom his interest in the property mentioned in this cause descends and are parties to this suit.

EDWARD A. NEWMAN
Solicitor for Complainant, Charles E. Travers.
C. H. STANLEY.
FILLMORE BEALL
Solicitors for Defendants, John H. Travers, James W. Travers, Joseph Travers and Kate M. M. Owens.
KATIE M M OWENS.

63 DISTRICT OF COLUMBIA: *s. s.*

I Kate M. M. Owens do solemnly swear that I have read the foregoing statement by me subscribed and know that the contents

thereof and that the facts therein stated are true to the best of my knowledge and belief.

KATIE M M. OWENS.

Subscribed and sworn to before me this Eighteenth day of May, 1901.

[SEAL.] WILLIAM W. MILLAN
Notary Public D. C.

64 *Order of Final Ratification of Certain Sales and Reference to Auditor.*

Filed June 17, 1901

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET VIR
vs.
JOHN H. TRAVERS ET AL } No. 21484 Eq.

The order *nisi* passed in this cause on the 14th day of May 1901 concerning the sales of lots twenty seven (27), twenty eight (28), twenty nine (29), thirty (30) and twenty five (25) and thirty three (33) (less alley-way) in George E. Hamilton et al Trustees' subdivision of square two hundred and ninety one (291) in the City of Washington and District of Columbia, having been duly published, and no cause having been shown to the contrary, it is, this 17th day of June 1901, by the Court ordered ; that said sales and each of them be and the same are hereby finally ratified and confirmed, and that said Trustees, upon payment in full of the purchase money and upon full compliance with the terms of sale, and not before, convey the said lots by deeds in fee to the purchasers thereof respectively as directed by the decree of sale herein.

And it is further ordered that this cause be and the same is hereby referred to the Auditor to state the Trustees account
65 and to make distribution among the parties concerned according to their respective rights, as such rights may be determined by the Auditor after ascertainment thereof in conformity with the terms of the decree passed herein on the 17th day of December 1900.

A. C. BRADLEY,
Justice.

66 *Motion of the Sisters of Visitation of Georgetown to Amend Answer to Fifth Paragraph of Original Bill, and Affidavit in Support Thereof.*

Filed Jan. 13, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL., *vs.* JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

Now comes the defendant, the Sisters of the Visitation of Georgetown, and moves the Court for leave to amend the answer heretofore filed by it, in the above-entitled cause, for the reasons stated in the affidavit herewith filed.

GORDON & GORDON,
Solicitors for Defendant.

DISTRICT OF COLUMBIA, *to wit:*

Personally appeared before me, a Notary Public in and for the District aforesaid, M. Teresa White who being duly sworn, deposes and says that she is the attorney-in-fact for the said Sisters of the Visitation of Georgetown, and authorized to make this affidavit; that since the filing of the answers to the original bill, and since the decree or order of sale passed herein, evidence has been discovered tending to show that James Travers, now deceased, and Sophia V. O'Brien, formerly Sophia V. Travers, were lawfully married, and that of said marriage there was born the defendant, Annie E. Travers, who was born in lawful wedlock, the said Sophia V. O'Brien and Annie E. Travers being now resident in the City of Philadelphia, State of Pennsylvania; that said evidence is material to a
67 proper determination of the right, title and interest of the parties hereto, in and to the proceeds of sale of the property sold under a former order of this Court, and, therefore, it desires to amend said answer to the fifth paragraph of the original bill, which paragraph charges that said James Travers was never married, and never had a lawful child, and which allegation this affiant inadvertently and without knowledge of the real fact, admitted.

SR. M. TERESA WHITE

Subscribed and sworn to before me this 8th day of January, A. D. 1902.

[SEAL.]

CHARLES S. DRURY
Notary Public.

68 *Amended Answer to Bill of Complaint.*

Filed Jan. 13, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.,
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21484

Now come the defendants, M. Luisa Reinhart, Louis F. Reinhart, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell and Annie Mitchell, by leave of the Court first had and obtained, and by way of amendment to their answer heretofore filed by them, say as follows:

They withdraw all of their said answer, so far as it relates to the fifth paragraph of the original bill of complaint, and by way of amended answer say in response to the allegations of said paragraph that they admit that James Travers died at Point Pleasant, in the State of New Jersey, in the month of October, A. D., 1883, but they deny that he left no widow or lawful child surviving him. On the contrary they say that he left surviving him his widow, Sophia V. Travers, now Sophia V. O'Brien, who was his lawful wife at the time of his death, and who had been his lawful wife for many years prior thereto, and he left also one child, Annie E. Travers, one of the defendants herein, who was his lawful child, born of him, the said James Travers, and the said Sophia V.

69 Travers, now Sophia V. O'Brien, in lawful wedlock.

MARGARET M MITCHELL
ELIZABETH MITCHELL
ALICE V. ROHRER
By W. H. ROHRER
W H ROHRER
MARY L. WALLIS
SAMUEL WALLIS
by MARY L WALLIS
M L WYNNE RIENHARDT
L F REINHARDT.
SIDNEY MITCHELL and
ANNIE MITCHELL
by G E HAMILTON atty.

HAMILTON & COLBERT,
Solicitors for defendants.

We do solemnly swear that we have read the foregoing amendment to our answer to the Original Bill, and know the contents thereof; that the matters and things therein stated on our
70 personal knowledge are true, and the matters and things therein stated on information and belief, we believe to be true.

MARGARET M MITCHELL
ELIZABETH MITCHELL.
MARY L. WALLIS

Subscribed and sworn to before me this 10th day of January, A. D., 1902.
[SEAL.]

LOUISE F. DYER,
Notary Public, D. C.

71 *Amended Answer of Sisters of the Visitation of Georgetown, to the Fifth Paragraph of Original Bill.*

Filed Jan. 13, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL., *vs.* JOHN H. TRAVERS, ET AL. } Equity No. 21484

Now comes the defendant, The Sisters of the Visitation of Georgetown, by leave of the Court first had and obtained, and by amendment to its answer heretofore filed by it, says as follows:

It withdraws all of its said answer, so far as it relates to the fifth paragraph of the original bill of complaint, and by way of amended answer says in response to the allegations of said paragraph, that it admits that James Travers died at Point Pleasant, in the State of New Jersey, in the month of October, A. D., 1883, but it denies that he left no widow or lawful child surviving him. On the contrary it says that he left surviving him his widow, Sophia V. Travers, now Sophia V. O'Brien, who was his lawful wife at the time of his death, and who had been his lawful wife for many years prior thereto, and he left also one child, Annie E. Travers, one of the defendants herein, who was his lawful child, born of him, the said James Travers, and the said Sophia V. Travers, now Sophia V. O'Brien, in lawful wedlock.

SISTERS OF THE VISITATION OF GEORGETOWN
by SR. M. TERESA WHITE
Attorney in fact

GORDON & GORDON
Solrs for deft

I, the attorney in fact for the Sisters of the Visitation of Georgetown, duly authorized to make this affidavit, do solemnly swear that I have read the foregoing Answer subscribed by me, as
72 said attorney-in fact, and know the contents thereof; that the matters and things therein stated on my personal knowledge are true, and the matters and things therein stated on information and belief, I believe to be true.

SR. M. TERESA WHITE

Subscribed and sworn to before me this 8th day of January, A. D., 1902.

[SEAL.] CHARLES S. DRURY
Notary Public

73 *Motion to Amend Answer of Defts. Nos. 10–20 Inclusive to Original Bill, and Affidavit in Support Thereof.*

Filed Jan. 13, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.,
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

Now come the defendants, M. Luisa Reinhart, Louis F. Reinhart, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell and Annie Mitchell, and move the Court for leave to amend the answer heretofore filed by them in the above-entitled cause, for the reasons stated in the affidavit herewith filed.

HAMILTON & COLBERT
Solicitors for defendants.

DISTRICT OF COLUMBIA, *to wit:*

Personally appeared before me, a Notary Public in and for the District aforesaid, Margaret M. Mitchell, who being duly sworn, deposes and says that since the filing of the answers to the original bill, and since the decree or order of sale passed herein, evidence has been discovered tending to show that James Travers, now deceased, and Sophia V. O'Brien, formerly Sophia V. Travers, were lawfully married, and that of said marriage there was born the defendant Annie E. Travers, who was born in lawful wedlock, the said Sophia V. O'Brien and Annie E. Travers being now resi-
74 dent in the City of Philadelphia, State of Pennsylvania; that said evidence is material to a proper determination of the right, title and interest of the parties hereto, in and to the proceeds

of sale of the property sold under a former order of this Court, and, therefore, on behalf of herself and her co-defendants named in the foregoing motion, she desires to amend said answer to the fifth paragraph of the original bill, which paragraph charges that said James Travers was never married, and never had a lawful child, and which allegation this affiant and her co-defendants inadvertently and without knowledge of the real fact, admitted.

MARGARET M MITCHELL

Subscribed and sworn to before me this 9th day of January, A. D., 1902.

[SEAL.] RICHARD J. WATKINS
Notary Public D C

75 *Affidavit of Chas. E. Travers in Opposition to Motion for Leave to Amend Certain Answers.*

Filed Feb. 5, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET VIR. *vs.* JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

DISTRICT OF COLUMBIA; *ss:*

I, Charles E. Travers, one of the complainants in the above entitled cause, make oath and say that I am thirty-six years of age and a son of Elias Travers, deceased, who was a brother of James Travers, deceased; that the Mitchell children, defendants in this cause, have been well acquainted with the defendant, Annie E. Travers, since early childhood and all or some of the Mitchells visited her frequently while she was at school in Georgetown Convent; that the said Maria L. Reinhardt has known of the said Annie E. Travers for a good many years and knew of her said uncle, the said James Travers; that the said Mitchells and the said Maria L. Reinhardt are my first cousins and they are all very familiar with the history of the Travers family of which I and they are members. That my uncle James Travers a brother of my father while a young man lived in Georgetown as a single man with his aunt Miss Sidney Travers and afterwards went to Maryland and lived with her there. My father and mother and all the other members of our family, including the Mitchells and Mrs. Reinhardt, with one accord, have known from family history, family discussions, and otherwise, ever since the death of James Travers and the filing of an exemplified copy of his will in this jurisdiction, that he never was married and left no lawful wife or child; and that he never was married

to the said Sophia V. O'Brien, and that the said Annie F. Travers was not his child born in lawful wedlock. The admission to that effect in the answers in this cause was not a mere inadvertence, but was based upon conviction of the fact about which the said
76 Mitchells and said Reinhardt could not well be mistaken from their knowledge of family tradition.

CHAS. E. TRAVERS

Subscribed and sworn to before me this 24th day of January A. D. 1902.

[SEAL.]

J. WM. REILY
Notary Public D. C.

77 *Affidavit of James W. and Joseph Travers in Opposition to Motion for Leave to File Certain Answers.*

Filed Feb. 5, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET VIR COMPLAINANT
vs
JOHN H. TRAVERS ET AL DEFENDANT. } Equity No. 21844.

STATE OF MARYLAND
Prince George's County } ss:

We, James W. Travers and Joseph Travers, do make oath and say that we are defendants in the above entitled Cause and sons of Elias Travers, deceased, and grandsons of Nicholas Travers, Senior, who died about the year 1849 or 1850, leaving four sons and three daughters, to wit, Joseph, James, Nicholas and Elias, Mrs. Sydney V. Mitchell, Mrs. Mary Wynne and Miss Elizabeth Travers, all referred to in the bill in this Cause. That James Travers, our uncle, while a young man lived in Georgetown, as a single man with his Aunt Miss Sydney Travers; afterwards he went to the State of Maryland and lived in Talbot County, and the same was his legal residence and domicile at the time of his death in November, 1883, His death occurred while he was temporarily sojourning at Point Pleasant, New Jersey, and his remains, through our father and Mr. Thomas J. Fisher (now dead), were brought from there and buried in Oak Hill Cemetery in the District of Columbia. That at that time, it was family history and a matter of general repute in and out of the family that our uncle
78 James died without lawful widow or child, and it was then so understood by the said Mitchells, by all the members of the Travers family, and the fact never disputed or controverted

until the recent motion to amend the answer was filed in said Cause. The Mitchells were well acquainted with the said Annie E. Travers, who is said to be a child of our uncle, ever since her early childhood, some of them having visited her frequently while she was at the Georgetown Convent at school. We are quite sure that there never was any recognition of relationship on the part of the said Mitchells towards the said Annie E. Travers during all these years. We learned from our father and mother, our great Aunt Sydney, all of whom are now dead, and all the members of our family whom we ever met, that our uncle James died without lawful widow or child and that he never was married. That fact was, and is well known family history and tradition and never to our knowledge was ever questioned or disputed from the time of the death of Uncle James in 1883 until the filing of the motion aforesaid, and no one could have been better acquainted with that fact all this time than the said Mitchells and the defendant, Maria L. Reinhardt. We and our family with the Mitchells were present at the funeral of our said Uncle James at Oak Hill Cemetery, and no widow or child, or person claiming to be a widow or child of the said James was there.

JAMES W TRAVERS
JOS. TRAVERS.

Test W. T. ASHBY.
Subscribed and sworn to before me this 27th day of January 1902.
WOODVILLE T. ASHBY,
Notary Public in & for the County and State aforesaid

79 *Answer of Amelia C. and Chas. E. Travers to Motion of Certain Defendants for Leave to Amend Answer.*

Filed Feb. 5, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET VIR., vs. JOHN H. TRAVERS ET AL. } No. 21,484 Equity.

The answer of above named complainants to the motion of certain defendants, filed January 8, 1902, for leave to amend their answer in this cause.

For answer to said motion we, the said Amelia C. Travers and Charles E. Travers, complainants as aforesaid, say as follows:

That the bill in this cause was filed on the 8th day of June, 1900, and, on the 22d day of June, 1900, the said defendants (Mitchells and Reinhardt) filed their original answer thereto, whereby they

called for proof of the allegations of the fifth paragraph of the bill touching the question of the death of James Travers without lawful child or children. The defendant The Sisters of the Visitation, however, by its answer admitted the fact as alleged in said paragraph 5 of the bill. Exceptions were filed to these answers and, on the 10th day of November 1900, the Court, on motion of said defendants, granted them leave without opposition to file an amended answer with permission to the defendant Annie E. Travers to offer a separate answer. That thereupon, on the 14th day of Nov. & Dec. 3d, 1900, such amended answers were filed, whereby the averments of the said fifth paragraph of the bill were unconditionally admitted to be true, and on the 3d day of December, 1900, the said defendant Annie E. Travers submitted her separate amended answer, disclaiming all rights in and to the several parcels of real estate in the bill described and averring that she had no interest whatever in
80 the other allegations of the bill, which included the said fifth paragraph. Complainants duly filed a replication on the 13th day of December, 1900; and on the 14th day of December 1900, testimony was taken on behalf of complainants and proof offered to sustain the averments of the bill, including the fifth paragraph thereof. The witnesses were not cross-examined by the Solicitors for said defendants, and a stipulation or declaration by the Solicitors for the respective parties was made before the Examiner who appended the same to the depositions, the effect whereof was to concede that the said testimony established the allegations of the bill, including the averments of the fifth paragraph thereof, and no testimony was to be offered by defendants to controvert the same. Thereupon, on the 17th day of December, 1900, on the hearing of the cause, a decree of sale was duly passed, consented to in writing by all the parties to this cause, as well as by their respective Solicitors of record, and the trustees have made sales of real estate thereunder, aggregating the sum of $324,262.13, and said sales have been finally ratified by the court and the title thereto has passed to and been vested in the several purchasers thereof. That the proceeds of said sales to the extent of $192,325.17 have been distributed under the direction of the Court in pursuance of the Auditor's report, duly ratified and filed herein on the 5th day of July, 1901. The case then regularly proceeded before the Auditor concerning the disputed fund during December, 1901, and January, 1902, in pursuance of the provisions of said decree of sale and complainants had about concluded their testimony when to their great surprise counsel for the Mitchells and Mrs. Reinhardt and the Sisters of the Visitation, defendants as aforesaid gave notice for the first time of their intention to ask the Court for leave to amend their answer and deny that said James Travers died without lawful widow or child, as
81 averred in the fifth paragraph of the bill.

The foregoing and other facts are all established by the record in this cause, which is referred to and made part hereof, and

for facts outside of the record showing why said motion should not be allowed, we submit the affidavits filed herewith and made part hereof.

Whereof, we say, that said motion should be overruled.

CHAS. E. TRAVERS
AMELIA C. TRAVERS

We solemnly swear that we have read the foregoing answer by us subscribed, and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

Sworn to before me this 24th day of January, 1902.

[SEAL.]

J. WM. REILY,
Notary Public, D. C.

82 *Order Allowing Defendants to Amend Answer, Etc.*

Filed Feb. 7, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.,
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

Upon consideration of the motions respectively of the defendants, M. Luisa Reinhart, Louis F. Reinhart, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell and Annie Mitchell, and of the defendant the Sisters of the Visitation of Georgetown, for leave to amend their respective answers heretofore filed in this cause, by withdrawing said answers, in so far as they relate to the fifth paragraph of the bill of Complaint in this cause filed, and by the substitution as to said fifth paragraph of the amended answers filed in this cause on January 18, [3] 1902, it is by the Court this 7th day of February, A. D., 1902, ordered that said defendants be, and they are hereby, allowed to amend said answers respectively as prayed, and it is further ordered that the answers filed by them on said January 13, 1902, be, and the same are, taken and considered as and for said amended answers. and it is further ordered that the testimony already taken in this cause shall stand as if taken in the cause as amended.

A. C. BRADLEY,
Justice.

83 *Exceptions to Last Amended Answer of Certain Defendants.*

Filed February 15, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET VIR.,
vs.
JOHN H. TRAVERS ET AL. } No. 21,484 Equity.

Exceptions of the complainants to the last amended answer of the defendants M. Louisa Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell and Annie Mitchell.

The complainants except to said amended answer of the defendants as evasive, imperfect, contradictory and insufficient, and for causes of exception show, as follows:

First, That no time and place of the pretended marriage of the said James Travers are set out in said amended answer, which also fails to aver the manner and form of said supposed marriage—whether ceremonial or a common law marriage.

Second, That said answer avers in general terms only that the said James Travers left a lawful widow and lawful child, without averring the facts which, if true, would make them his lawful widow and child.

Third, That the said amended answer of said defendants is in conflict with, and contradicts, their answer filed herein on the day of -ember, 1901, in this, that in the former it is sought to be shown that said Annie E. Travers was his heir at law, and in the latter that Elias Travers, a brother, and Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, sisters, constituted his heirs, and, in connection with whom and by virtue of such heirship of said brother and sisters, the said defendants claim an estoppel exists against the said complainants and others.

84 In all or some of which particulars the said complainants are advised that the said amended answer of the said defendant is evasive, insufficient, imperfect and contradictory, and ought to be amended, and humbly pray that the same may be amended accordingly.

EDWARD A. NEWMAN
Sol'r for Complainants.

85 *Exceptions to Last Amended Answer of The Sisters of Visitation.*

Filed Feb. 15, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET VIR., vs. JOHN H. TRAVERS ET AL. } No. 21,484 Equity.

Exceptions of the complainants to the last amended answer of the defendant The Sisters of the Visitation.

The complainants except to said amended answer of the defendant as evasive, imperfect, contradictory and insufficient, and for causes of exception show, as follows:

First: That no time and place of the pretended marriage of the said James Travers are set out in said amended answer, which also fails to aver the manner and form of said supposed marriage—whether ceremonial or a common law marriage.

Second: That said answer avers in general terms only that the said James Travers left a lawful widow and lawful child, without averring the facts which, if true, would make them his lawful widow and child.

Third: That the said amended answer of said defendant is in conflict with, and contradicts, its answer filed herein on the 14th day of November, 1901, in this, that in the former it is sought to be shown that said Annie E. Travers was his heir at law, and in the latter that Elias Travers, a brother, and Mary Wynne, Sydney Virginia Mitchell and Elizabeth Travers, sisters, constituted his heirs, and, in connection with whom and by virtue of such heirship of said brother and said sisters, the said defendant claims an estoppel exists against the said complainants and others.

86 In all or some of which particulars the said complainants are advised that the said amended answer of the said defendants is evasive, insufficient, imperfect and contradictory, and ought to be amended, and humbly pray that the same may be amended accordingly.

EDWARD A. NEWMAN
Sol'r for Complainants.

87 *Order Overruling Exceptions to Amended Answers and Permitting Copies of Amended Answers to be Filed in Place of Originals Lost or Mislaid.*

Filed Apr. 12, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL
vs
JOHN W TRAVERS ET AL } Equity No; 21484

This cause coming on to be heard upon the exceptions of the complainants to the amended answers of the defendants M. Louisa Reinhardt, Louis F. Reinhardt, Margaret A. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, and Annie Mitchell, and of the defendant, The Sisters of the Visitation, and having been argued by counsel, It is this 12th day of April A. D. 1902, ordered, and decreed by the Court, that said exceptions to said amended answers be, and the same hereby are over-ruled. And whereas it appears that said amended answers, which were filed on the thirteenth day of January A. D. 1902, and referred to in the order passed on the seventh day of February 1902, and the exceptions thereto, have been lost or mislaid, It is by consent of counsel, further ordered, that copies of said amended answers and of said exceptions be filed herein, to be taken and considered as and for the original.

A. C. BRADLEY,
Justice.

88 *Replication to Last Amended Answers of Certain Defendants.*

Filed May 1, 1902.

In the Sureme Court of the District of Columbia.

AMELIA C. TRAVERS ET. VIR.
vs.
JOHN H. TRAVERS ET. AL. } No. 21484 Equity.

The complainants hereby join issue with the defendants M. Luisa Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell Annie Mitchell and the Sisters of the Visitation on their respective amended answers filed January 13th 1902—copies thereof in lieu of the originals being filed April 12th 1902 per Order of Court.

EDWARD A. NEWMAN
Solr. for Complts

89 *Order Referring Cause to J. Arthur Lynham, Examiner, to Take Certain Testimony.*

Filed July 1, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET VIR., vs. JOHN H. TRAVERS, ET AL. } No. 21,484, Equity.

On motion of the complainants, by their solicitor, it is this 1st day of July, 1902, ordered that this cause be and the same is hereby referred to J. Arthur Lynham, an examiner of this court, to take such testimony in the District of Columbia as may be offered by the parties to this cause on the issues raised by the amended answers filed herein on the 13th day of January, 1902.

If any testimony upon said issues shall be desired by any party from witnesses residing out of the District of Columbia, such testimony shall be taken on commission to be issued as provided by law and the rules of this court, upon application therefor.

By the Court,

E F BINGHAM
Chief Justice

I consent to this order
GEORGE E HAMILTON
GORDON & GORDON

90 *Order Limiting Time for Taking Testimony to 70 Days.*

Filed Nov. 5, 1902.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET VIR. vs. JOHN H. TRAVERS ET AL. } No. 21484 Eq.

On motion of the complainants by their Solicitor, it is this 5th day of November 1902. Ordered: That the time for the taking of testimony on the issues raised by the amended answers filed in this cause on the 13th day of January 1902 be and the same is hereby limited as follows, to wit:

The defendants in said answers to take their testimony within thirty (30) days from the date of this order.

The complainants and the other defendants not parties to said

answers to take their testimony in reply within forty (40) days after the expiration of said thirty (30) days.

The defendants named in said answers to take their testi-
91 mony in rebuttal, (if any,) within ten (10) days after the expiration of said last mentioned limitation of time.

A B HAGNER,
Asso. Justice.

Consented to
HAMILTON & COLBERT
EDWARD A. NEWMAN.
GORDON & GORDON *for Sisters of Visitation*
C. H. STANLEY
FILLMORE BEALL.

92 *Motion to Extend Time to Take Testimony.*

Filed Dec. 20, 1902.

In the Supreme Court of the District of Columbia.

TRAVERS
v.
TRAVERS
} Eq. No. 21,484.

Now comes the defendants in the above entitled cause and move the Court to extend the time within which testimony in this cause make be taken for the reasons stated in the affidavit filed herein.

HAMILTON & COLBERT
Solicitors for defendants

93 *Order Directing Commission to Issue to J. Arthur Lynham to Take Deposition of Witness in Philadelphia.*

Filed Jan. 14, 1903.

In the Supreme Court of the District of Columbia

AMELIA C. TRAVERS ET AL
vs.
JOHN H. TRAVERS ET AL
} Eq No. 21,484.

Upon application of the defendants, it is by the Court this 14th day of January A. D. 1903, ordered that a commission issue out of this Court to J. Arthur Lynham, of the City of Washington, D. C. to take the deposition of Sophia V. O'Brien, a witness residing in

the City of Philadelphia in the State of Pennsylvania, proposed to be examined on behalf of the defendants this is by consent of parties.

A B HAGNER
Asso Justice

94 *Deposition of Mrs. Sophia V. O'Brien.*

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL
vs.
JOHN H. TRAVERS ET AL
} Commission to take depositions. No. 21484 In Equity.

The President of the United States to J. Arthur Lynham Greeting:

Know you, That in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with power and authority to examine Sophia V O'Brien at Philadelphia as witness for the Defendants in the above-entitled cause (orally); and, therefore, you are hereby commanded, at a certain day and place, or certain days and places, to be appointed by you, to cause said witness to come before you, and then and there examine her on oath or affirmation, and reduce her testimony into writing to be signed by said witness; and, having so done, annex the same to this commission, closed up under your seal, and make return thereof into said Court with all convenient speed.

Witness, The Honorable Edward F. Bingham, Chief Justice of said Court, the 15th day of January, A. D. 1903.

Seal Supreme Court of the District of Columbia.

J. R. YOUNG, *Clerk.*
By R. J. MEIGS, JR., *Assistant Clerk.*

95 In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL
vs.
JOHN H. TRAVERS, ET AL
} No. 21484 In Equity.

At the execution of the foregoing commission issued out of the Supreme Court of the District of Columbia, and to me directed, empowering me to examine witnesses in the above-entitled cause, I, J. Arthur Lynham, the Commissioner in the said commission named, first duly took the following oath, viz:

"I shall according to the best of my skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take

the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed (orally) so help me God."

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG *Clk Sup. Ct. D. C.*
By R. J. MEIGS, JR., *asst ck*

I then proceeded, on the 17th day of January, in the year of our Lord nineteen hundred and three (1903), at the office of William V. McGrath, 718 Walnut street in the City of Philadelphia and State of Pennsylvania at 2 o'clock P. M., under the said commission, pursuant to notice (and in the presence of the counsel of the respective parties), to take the following depositions, that is to say:

Sophia V. O'Brien, a witness of lawful age, produced on behalf of the defendants being by me first duly sworn according to law, makes oath, deposes, and says as follows, that is to say: (the counsel for the parties having first consented that the testimony taken under the said commission should be taken down stenographically and reduced to typewriting), as appears by the deposition hereto annexed.

96 I further certify That then and there at the time and place named, the testimony of the said witness was reduced to shorthand writing (as per agreement of counsel) and the testimony of the said witness was by me signed in lieu of said witness, pursuant to stipulation of Counsel, and that I have annexed to the said testimony the commission to me issued.

And I further certify That my fees for taking said testimony are $25 which has been paid by the defendants and that I am not of counsel for either party to this cause or interested in the event of the suit; and that I am now about to close the same with said commission under my seal, and personally return the same in the Clerks Office of the Supreme Court of the D. C.

Witness my hand and seal this 23rd day of January A. D. 1903.

J. ARTHUR LYNHAM, *Commissioner.*

NOTE.—The Commissioner will then annex the depositions and exhibits to the Commission by passing tape through each paper, or otherwise, carefully seal up the whole in an envelope, write his name across the seals, and direct as follows: "To the Clerk of the Supreme Court of the District of Columbia, Washington, D. C." He will also indorse across the end of the package, the title and number of the case, the number of the depositions inclosed, in whose behalf taken, the amount of his fee for taking the same, and by whom paid.

97 In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

PHILADELPHIA, PA., *January 17th, 1903.*—2 o'clock p. m.

Met, pursuant to agreement, at the office of William V. McGrath, No. 712 Walnut street, Philadelphia, Pennsylvania to take the testimony of Mrs. Sophia V. O'Brien.

Present: Messrs: Arthur A. Birney and Charles H. Stanley representing the complainants and certain defendants, and Mr. Michael J. Colbert representing certain defendants.

Whereupon—Mrs. SOPHIA V. O'BRIEN, produced as a witness on behalf of certain of the defendants, and being first duly sworn, was examined and testified as follows:

Direct examination,

By Mr. BIRNEY:

Q Resuming the cross-examination which was broken off in Washington, I now ask you to state whether the child Annie, of whom you have testified, is your own child? A No; she is Mr. Travers' child.

Q And she is not your child? A No. Her mother was
98 a girl fifteen years old. Of course, I would swear to anything to shield Annie; poor little thing.

Mr. COLBERT: We will protect her, Mrs. O'Brien, as far as we can.

Q And, of course, there never was any marriage between James Travers and the mother of this child? A No.

Q And she was, in fact, an adopted child, taken into your family as an adopted child, and adopted by you and Mr. Travers? A Yes. I was with the mother when the child was born. We were all in New York at the time. She was sixteen months old when I brought her home.

Q Annie was sixteen months old when you took her there? A Yes. Left her with a nurse who nursed her until she was old enough to take to bottle, and after she was sixteen months old.

Q Then you took her down into Talbot County, Maryland? A Yes, sir.

Q And when, in your previous examination, you stated that she was your child you made a mistake? A I made a mistake, but to save her.

Q Is not the same thing true of the child Ida of whom I inquired of you? A Yes.

Q She was not your child either? A No. I lost my two
99 children, a boy and a girl, about a year after I married Mr. Travers.

Q They were twin children, were they? A No, of premature birth.

Q They both died? A Yes.

Q And neither Annie or Ida were your children? A No.

Redirect examination,

By Mr. COLBERT:

Q Mrs. O'Brien, these two children of yours who died, did they live after birth? A Oh, no; they were of premature birth.

Q Born dead? A Yes.

Q And they were born after you and Mr. Travers were living together as man and wife? A Yes, sir, about a year.

NOTE: Pursuant to stipulation of counsel, the Commissioner was authorized and instructed to sign the witness' name to her fore going deposition.

J. ARTHUR LYNHAM
Commissioner.

100 *Testimony for the Defendants.*

Filed Jan. 29, 1903.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 21,484.

Be it remembered that pursuant to an order of reference to me in the above entitled cause on the 1st day of July, 1902, at an examination of witnesses begun and held pursuant to agreement on October 4th, 1902, at which said examination there were present Messrs. Arthur A. Birney, Edward A. Newman, Charles H. Stanley and Fillmore Beall representing the complainants and certain defendants, and Messrs. Michael J. Colbert and J. Holdsworth Gordon representing certain defendants, personally appeared before me, J. Arthur Lynham, an Examiner in Chancery of said Court, the within named witnesses, who being called for and on behalf of the defendants, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters at issue in the above entitled cause, did depose and say what is hereinafter set out as stated by them.

J. ARTHUR LYNHAM
Examiner.

101 In the Supreme Court of the District of Columbia

AMELIA C. TRAVERS, ET AL.
vs.
JOHN H. TRAVERS, ET AL.
} In Equity No. 21,484.

WASHINGTON, D. C., *September 15, 1902.*
Monday, 11 o'clock, a. m.

Met, pursuant to agreement, to take testimony on behalf of certain defendants represented by Messrs. Hamilton & Colbert and J. Holdsworth Gordon, under their last amended answer.

Owing to the non-attendance of witnesses, an adjournment was taken until September 25th, 1902, at 2 o'clock, p. m.

September 25th, 1902, Thursday, 2 o'clock, p. m.

Met, pursuant to adjournment.

Present, the solicitors for the respective parties.

Owing to the non-attendance of witnesses, an adjournment was taken until further notice.

102 *October 4th, 1902,* Saturday, 12 o'clock, m.

Met, pursuant to agreement.

Present: Messrs. Arthur A. Birney, Edward A. Newman, Charles H. Stanley and Fillmore Beall, representing the complainants and certain defendants, and Messrs. Michael J. Colbert and J. Holdsworth Gordon, representing certain defendants.

Whereupon Mrs. Sophie V. O'Brien, produced as a witness on behalf of certain of the defendants, and being first duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. COLBERT:

Q. Mrs. O'Brien, what is your full name? A. Sophie V. O'Brien.

Q. And where do you reside? A. At Philadelphia, I presume. We live during the summer months at Point Pleasant, but Philadelphia is the residence, is it, or New Jersey?

103 Q. Well, it don't make any difference. You live in Philadelphia during the winter months and at Point Pleasant during the summer? A. Yes, sir.

Q. Who is your husband? A. William H. O'Brien, of Philadelphia.

Q. He is a lawyer, I believe? A. He is.

Q. When were you married to him? A. Fourteen years ago.

Q. And where were you married? A. At Point Pleasant, New Jersey.

Q. Were you ever acquainted with James Travers? A. Yes.
Q. When did you first meet him? A. In 1864.
Q. And where did you meet him? A. In Virginia.
Q. What part of Virginia? A. Alexandria.
Q. I will have to ask you how old you were at that time, Mrs. O'Brien, in 1864? A. I was seventeen.

104 Q. Where were you born? A. In Virginia. In Jefferson County, Virginia.
Q. And what was your maiden name? A. Grayson.
Q. Sophie V. Grayson? A. Yes.
Q. Were you ever married to James Travers? A. I thought I was.
Q. You say that you met him in 1864, for the first time? A. Yes.
Q. And that you met him in Alexandria? A. Yes, in 1865.
Q. Did you ever go to live with him? A. Yes.
Q. When? A. In 1865, the 15th of August.
Q. And how long did you continue to live with him? A. Until his death, the 1st of November.
Q. Of what year? A. 1883.
Q. The 1st of November, 1883 that he died? A. Yes.

105 Q. Where did he die? A. At Point Pleasant.
Q. Did he leave a will? A. Yes.
Q. I don't care to ask you about the contents of that will, Mrs. O'Brien, except to ask you if you saw—well, I presume you have seen it, have you not? A. Yes, I have seen it.
Q. Were you the executrix of his will? A. Yes.
Q. And where was the estate administered? A. Talbot County, Maryland—no, not Talbot County—yes, Talbot County, and in Point Pleasant, too.
Q. Talbot County, Maryland, and in Point Pleasant, New Jersey? A. Yes. We owned property in Talbot County—a farm. Lived there some sixteen or seventeen years, I believe.
Q. Now, where did you and Mr. Travers live, say in 1865, when you first went to live with him? A. In 1865, in August, during the latter part of the summer, in Shrewsbury River; in a hotel on the Shrewsbury River.
Q. Where is that, Mrs. O'Brien? A. Why, that is near New York.

106 Q. Near New York City? A. Yes, near New York. Shrewsbury River, and then we rented a place in Bel Air, Harford County.
Q. Maryland? A. Yes, and lived there, until, I think it was, 1867, when we purchased this property in Talbot County.
Q. And howlong did you live in Talbot County? A. From 1867 to 1883.
Q. Continuously? A. Yes.
Q. Were any children born to you and Mr. Travers? A. Yes.
Q. How many? A. Two.

Q. Where was the first child born? A. Thirty odd years ago; I hardly remember it. Annie is in her twenty-fourth year.

Q. How old did the first child live to be? A. A year or eighteen months.

Q. About eighteen months? A. Yes, sir.

Q. What was the name of that child? A. Ida.

107 Q. How was it known in the community where you lived—by what last name? A. I beg your pardon.

Q. By what name was that child known in the community—by what last name? A. Why, Ida Travers, of course.

Q. And with reference to the year, 1865, when you and Mr. Travers commenced to live together, when was that child born? Do you understand my question? How soon after August, 1865? A. It was born about two years after.

Q. And that was about 1867, then? A. Yes, about that time.

Q. And when was the next child born? A. Well, there was one or two that did not live.

Q. There were one or two children that died in infancy? A. Well, they were not born. They were born, but died just at childhood.

Q. Died at birth? A. Yes.

Q. Then, was Annie the last child? A. Yes, Annie was the last child.

108 Q. Now, can you tell me when she was born? A. No, I just seem to—I can't calculate. Annie, she is now in her twenty-fifth year. Twenty-four or twenty-five, wasn't she, last March.

Q. She is now, according to your best recollection— A. (Interposing): Yes, and on the 11th of March.

Q. She was how old? A. She is in her twenty-fifth year. She was twenty-four years old the 11th of last March. Well, I thought I was fully prepared for the ordeal, but I don't want you to go so far back—years ago.

Q. Where was Annie born? A. She was born in New York.

Q. In New York City? A. Yes; in New York City.

Q. Well, where was your home at the time she was born? A. We had apartments on Twenty-third Street. I could not tell you the number, for I have forgotten, but I could get all those details, if it is necessary. I am really not prepared for it, because I did not know what was coming.

109 Q. Has Annie Travers lived with you ever since? A. Yes, except when she was at the Visitation School, under the care of Sister Lizzie.

Q. How was she always known—by what name? A. Annie Travers.

Q. In the various places in which you lived with Mr. Travers, and to which you have already testified, were you regarded in the community as his wife?

MR. BIRNEY. I object. That is leading and incompetent.

A. (Question not answered.)

Q. How did Mr. Travers so regard you in that relation? A. Why, as his wife.

Mr. BIRNEY. Objected to as incompetent.

Q. Did you ever sign deeds as his wife? A. Certainly, I always did. I believe I showed you some papers I signed.

Q. Were you named in his will as his wife? A. Certainly.

Mr. BIRNEY. I object to that as clearly incompetent, and calling for the contents of the deeds and of the will.

Mr. STANLEY. Objected to as leading, too.

Q. Was there ever any ceremony of marriage performed between you and Mr. James Travers, and if so, state where and under
110 what circumstances. A. Well, now, how shall I answer that question? I told you some of the particulars.

Q. Well, just tell us all you know about it, and tell us the whole truth about it. A. About the mock ceremony, that I thought it was a marriage, until five or six years afterwards, I found that it was not, and then, of course, there were many reasons——

Mr. COLBERT. (To the Examiner:) Will you please read the question?

The Examiner did so, as follows:

Q. Was there ever any ceremony of marriage performed between you and Mr. James Travers, and if so, state where and under what circumstances.

Mr. COLBERT. (To the witness:) Now go ahead, Mrs. O'Brien.

A. Well, what shall I say?

Q. You heard the question. A. What was the last question?

The Examiner read as follows:

Q. Was there ever any ceremony of marriage performed between you and Mr. James Travers, and if so, state where and under
111 what circumstances. A. It seems not a legal ceremony, as I found afterwards.

Q. Well, what was that ceremony that you refer to? A. Well, it seems a friend of his performed the ceremony. I was under the impression that he was a minister. He was an old Washington friend, but I can't remember his name, and some years afterwards when he was dying of typhoid fever, he wrote Jim——

Mr. BIRNEY. I object to that unless the writing is produced.

Q. Go ahead. A. To come to see him. He then said that we were not married, and begged him to do what was right.

Q. Who said that? A. I can't remember his name. I know

his first name was Henry; that is all I can remember. I will remember it afterwards. I never saw him but once, at that time, and that is all there was. But I always lived with Mr. Travers as his wife.

Q. I don't care anything about the details, or any-talk that you had with any other person. But this was five or six years after this alleged ceremony? A. Yes.

112 Q. That you learned that this man was not a minister? A. Yes.

Q. Had you been living with him continuously all that time? A. Since 1865 I went to live with Mr. Travers, until his death.

Q. Was there ever any other ceremony of marriage performed between you and Mr. Travers, other than the one you refer to? A. No.

Q. How did Mr. Travers introduce you in the community in which you resided? A. Always as his wife. I have old friends who are living in Talbot County and Bel Air who would prove that, if it was necessary.

Q. How long after Mr. Travers' death did you marry Mr. O'Brien? A. Five years afterwards. A little over five years, I think.

Q. During that five years by what name were you known in the community? A. Always as Mrs. Travers. We lived at Point Pleasant. We sold our farm in Talbot County in 1883, on

113 account of Mr. Travers' health failing, and then we went to Point Pleasant and purchased property there, and after his death I remained there ever since.

Q. Mrs. Travers, where were you married to Mr. O'Brien? A. In Alexandria.

Q. To Mr. O'Brien? A. Oh, Mr. O'Brien—you asked me that question? In Point Pleasant, New Jersey, at the Catholic Church.

Q. And by whom were you married?

By Mr. BIRNEY. That is objected to as immaterial.

A. Father Peter. I have the marriage certificate at home that I can produce.

Q. By what name were you married to Mr. O'Brien? A. Travers—Mrs. Travers.

Q. After you discovered, some four or five years after you went to live with Mr. Travers, that you had not been married to him according to any ceremony, did he ever make any promise to you in that regard? A. Always. Poor fellow, he would have it all right——

Mr. BIRNEY. We object to that.

Q. And what did he say? A. Well, he would always

114 say that it was all right, and we were just as much married as if we had been married before a priest or a minister.

Q. How old was Annie when her father died? A. Five years. She was in her fifth year when he died.

Q. Will you please look at this paper which I now hand you and state whose signatures appear at the bottom of it. (handing witness paper) A. (After examining same:) James Travers and Sophie V. Travers.

Q. Is that your signature? A. Yes.

Q. And is that Mr. James Travers' signature? A. Yes, that is his signature.

Mr. COLBERT. I offer this deed in evidence, for the sole purpose of showing the declaration made by Mr. James Travers that this lady was his wife.

NOTE: And the same is filed by the Examiner, marked "Defendants' Exhibit No. 1".

Mr. BIRNEY. We will reserve an exception to the document as incompetent.

Mr. COLBERT. I offer in evidence in this connection a
115 certified copy of the last will and testament of James Travers, and particularly the second clause, which reads as follows: "Second; To my wife, while she remains my widow, all my property of every description and character, not hereinbefore disposed of, with full power of disposition and alienation; provided, however, that in case our daughter survives her" &c. And the last clause, "I hereby appoint my wife sole executrix of this, my last will and testament". That is a copy of the will, but not certified. I will have it certified before the testimony is filed.

(NOTE: Filed, marked Defendants' Exhibit No. 2.)

Mr. BIRNEY. The will, in so far as its recitals are concerned, and the declarations that the testator had a wife, or had a daughter, are objected to on the ground that they are incompetent for James Travers by any declaration, whether in writing or otherwise, to enlarge his estate in the property in question.

Q. Mrs. O'Brien, will you please look at that paper which I hand you, and state what it is. (Handing witness paper.) A. (After examining same:) That is the will Mr. O'Brien wrote some years ago.

Q. Mr. who? A. Mr. Travers. I always call it O'Brien. Mr. Travers wrote some years ago, and this is his signature.

116 Q. Is that his genuine signature? A. Yes. Anybody who had ever——

Q. Is the body of the paper in his handwriting? A. Oh, yes. Any of the old citizens here who rented property from him would recognize that signature.

Mr. COLBERT. I offer that paper in evidence. It bears date February 8th, 1881.

NOTE: And the same is filed by the Examiner, marked "Defendants' Exhibit No. 3".

Mr. BIRNEY. The document offered is objected to on the ground already stated, and for the further reason that it appears upon its face to be mutilated, particularly in one part important to this controversy.

Q. Mrs. O'Brien, where did you get this paper? A. Mr. Travers wrote it.

Q. How did you get it? A. Why, it was given to me. Left in his papers.

Q. Can you explain how this paper is in its present shape? A. Why, Annie cut it when she was a little thing.

Q. The baby cut it? A. Yes; she would cut everything in sight.

117 Q. Who pasted it on this other piece of paper? A. Her father pasted it.

Q. Mr. Travers himself? A. Yes.

Q. And what did he do with it, after having pasted it to this other sheet? A. I really don't know. I suppose he—I really don't know. I suppose he put it away.

Cross-examination.

By Mr. BIRNEY:

Q. Mrs. O'Brien, in what year were you born? A. I really don't know. I would have to go back so far that I would have to count it up.

Q. Well, how old are you now? A. I suppose I must be over fifty.

Q. Well, cannot you state with more exactness? A. Well, I was seventeen in 1865. Count it yourself. I guess I am nearer sixty, ain't I? I don't know, it has been so long a time ago.

Q. What was your birthday? A. On the 3rd of February.

Q. Where did you live in Jefferson County? A. I lived in Harpers Ferry, Jefferson County, Virginia.

118 Q. And who were your parents? A. William and Mary Grayson.

Q. Are they living? A. Oh, no. Died when I was about a child.

Q. Did you have any brothers and sisters? A. I had two. Lost both.

Q. Were they brothers or sisters? A. One brother and one sister.

Q. And how long since they died? A. About thirty years. Probably more than that.

Q. Before 1865? A. Oh, yes.

Q. Did your parents die before that time? A. Yes; my parents died when I was quite a little thing.

Q. After your parents' death, with whom did you live? A. I lived with my aunt.

Q. What was her name? A. Mrs. Keene.

Q. What was her first name? A. Mary.

Q. She lived in Harpers' Ferry? A. No; she lived in Martinsburg, Virginia.

119 Q. Then you lived in Martinsburg? A. Yes, for a while.

Q. When? A. When I was a child.

Q. Well, when did you leave Martinsburg—how old were you? A. I was about seventeen, I think, at that time.

Q. Was that before you met James Travers, or afterwards? A. Before I met him.

Q. Where were you living when you met him? A. I was living with my aunt. We were visiting in Washington when I met Mr. Travers, and I married Mr. Travers and went away with him. At least, I thought I had married Mr. Travers, and I went away with him, and have not seen any of them since. My aunt is dead years ago.

Q. Where were you living in Washington? A. My aunt stopped at a hotel. I could not tell you.

Q. What hotel was it? A. I could not tell you.

Q. On what street was it? A. It was one of the hotels here in Washington. I could not tell you. It was a great many

120 years ago, and I have forgotten.

Q. How long did you live there? A. We just stopped there for a few days or a week.

Q. You had never met James Travers up to that time? A. No.

Q. And you went away with him at that time? A. Yes.

Q. After an acquaintance of less than a week? A. No. I had met him before, in 1864. We were in Washington on a visit, and then in 1865 I went away with him, as you put it. Oh, I don't really see why I should be questioned this way in regards to this Travers property. I have got nothing to do with the property; I don't want any of the property.

Q. You have offered yourself as a witness here. A. No, I haven't at all, but it makes it very unpleasant for me, and for my daughter's sake—my life is almost spent, and her life is all before her. I don't see why I should be brought down here. I don't want the property, and many of them is very unpleasant, and I hadn't an idea—I did not brace myself up for it, and I find I am not really able to go through the ordeal, when it does not mean anything to me.

121 I don't want anything, and have nothing to do with the property and don't want any of it. Mr. Travers left me very comfortably, both myself and my children, and I don't see why I should be a witness for the Travers estate at all. I objected to coming to Mr. Colbert's office, and the time he has had getting me down here, because I knew there would be many unpleasant things, and things foreign to the subject. There is no use sitting

here and being exasperated in that way. As far as I am concerned, my life is pure; only my life in connection with Mr. Travers, I am ashamed of it.

Mr. BIRNEY. Just answer my questions, and don't talk about it. I must stop you further statement.

Q. You say you met Mr. Travers first in 1864? A. Yes, and I married him in 1865, and I lived with him until he died.

Q. Where did you meet him in 1864? A. In Washington.

Q. Where? A. I was introduced to him. I really could not tell where I was introduced, or anything about it.

Q. Where did you live in Washington in 1864? A. I was not living in Washington. We were on a visit. My aunt frequently visited here.

122 Q. How long was that visit? A. I suppose it was three or four days; something like that.

Q. Did you see him again between that visit and your visit here in 1865? A. Yes.

Q. Where? A. Saw him at my home.

Q. In what place? A. In Martinsburg, Virginia.

Q. How many times? A. Oh, once or twice, I think.

Q. Can you give us the name of any personal friend of yours, or acquaintance, who saw him in Martinsburg? A. Yes, I could, but I think that everybody that I knew at that time seems to have died, I am sorry to say.

Q. So you cannot give us the name of any living person? A. No, I cannot.

Q. Can you tell us who introduced him to you in 1864? A. I cannot. But I suppose it came around in a natural way

123 Q. Can you tell where you were living in '64, in Washington, when you met him? A. We were stopping at the hotel. I don't know which it was. It was Willard's—not Willard's, but across from Willard's, a small house—a smaller hotel. What was the name of that hotel? Willard's was up on the Avenue, and it is near up the other way, if you can remember the name. They called it house—the last was "house."

Mr. COLBERT. (To the witness:) Ebbitt House? A. Ebbitt House.

By Mr. BIRNEY:

Q. Do you say now it was the Ebbitt House at which you stopped? A. Yes, I think it was.

Q. And about how long were you there? A. Two or three days.

Q. Where did this ceremony that you speak of occur? A. Well, it is not worth while to go into that. It has been explained once.

Q. I must ask you to explain again. It has not been stated. A. I should think it was explained. It was in Alexandria. A friend's

house—a friend of Mr. Travers. There were two ladies and this man present, but that don't make any difference.

124 Q. Was your aunt present? A. My aunt was not present. I ran off. I ran away from my aunt. It was a very romantic thing to do.

Q. Now, Mrs. O'Brien, you have had some time for consideration since Mr. Colbert's inquiry in chief as to who was the person who performed the ceremony. Will you now give us the name of that person? A. I cannot give you the name. I do not remember the name at all. All that I remember is that it was Henry.

Q. Did you obtain at that time any certificate? A. No, I did not.

Q. What persons, if any, were present? A. There were two ladies present, but I don't remember who they were, and didn't know anything at all about them.

Q. Then you cannot now give us the name of any person, living or dead, who was present? A. I cannot.

Q. Where did you go after this ceremony you say was performed? A. We went to the Shrewsbury River.

Q. Did you go there direct from Alexandria? A. Yes,

125 a hotel. I forget the name of the hotel.

Q. Where is the Shrewsbury River, in New York or in New Jersey? A. In New York. It is there at Sandy Hook.

Q. And at what town did you stop? A. Well, the hotel was directly on the Shrewsbury River.

Q. Was there no village or settlement there having a name? A. No; merely boarding houses around.

Q. Was there a post office there? A. Oh, I suppose so; there were a number of boarding houses.

Q. What was its name? A. Schenk was the person who kept the hotel. I forget the name of the post office. I don't know.

Q. How long did you stay there? A. About three or four weeks, I think.

Q. Then, where did you go? A. Why, we came to Washington, as well as I remember, and we stopped at—it was one of Mr. Travers' houses. It seems to me it was a man named Wetzel, who keeps a restaurant. We stopped there some three or four weeks. From there we went to Baltimore and lived in apartments, and

126 from there we went to Bel Air, Harford County, Maryland, and from Harford County we went to Talbot and from Talbot we went to Point Pleasant. That is all there is about it.

Q. Now, when you came back to Washington, did you become acquainted with any of the members of Mr. Travers' family? A. I did not. Mrs. Mitchell was living at Piney Point then. Her sister Lizzie was in Frederick, and Mary was in South America. I don't remember meeting any of the family at all. Mr. Travers and Elias did not speak at that time, and Joe didn't speak. Joe visited us in Talbot County. Mr. Samuel Lewis and Mr. Franklin Clark, who is dead, visited us when we lived in Bel Air, Harford County,

and I suppose their sons remember me very well, if they are living.

Mr. BIRNEY. I object to the answer as irres-onsive to the question.

Q. How long did you remain in Washington on that occasion? A. I think we were here three weeks. If I had known what I had to go through, I could have gotten all these things together and fixed dates, but I don't remember now. I think three or four weeks.

127 Q. How was this house occupied by Mr. Wetzel at which you stayed? A. It was next to the store where Franklin Clark had a store so long. I have been there often. Collected rents for Mr. Travers, on Pennsylvania Avenue, and Samuel Lewis was next door. He kept a jewelry store.

Q. Between what streets? A. I don't know enough about Washington to know the streets. I don't know one from the other.

Q. Then you went to Baltimore, you say? A. Yes, went to Baltimore and had apartments there that winter.

Q. Where? A. Why, it was on Fayette Street, but I don't know what number. I can remember that much of it. We lived there during the winter.

Q. Who was the person who owned or occupied the house as landlord? A. Why, Marony. They are both dead. We had rooms there that winter.

Q. During that winter, did you visit any of Mr. Travers' relatives? A. No, I didn't visit the Travers. Why Mr. Travers

128 and his brothers never spoke.

Q. Did you visit his sisters? A. No.

Q. Did they visit you. A. No.

Q. Did your aunt visit you? A. My aunt died.

Q. When? A. Shortly after I married.

Q. How long after you married? A. Oh, some little while ago. Some little while after it.

Q. About how long? A. Before the winter was over. I don't really know how long.

Q. Between the 15th of August, and the time of her death, did she visit you? A. No.

Q. Did you visit her? A. I did not.

Q. Did Mr. James Travers have at that time any nephews or nieces? A. Yes, he had all Elias' children, and Mrs. Mitchell.

129 Q. Did they any of them visit you? A. Mrs. Mitchell at that time was living at Piney Point and Mrs. Wynne had a daughter—Mrs. Wynne was living in Guatemala, South America, and Mrs. Mitchell was then living at Piney Point, and Sister Lizzie was in the Visitation School at Frederick, Maryland, and he never visited his brothers, and they didn't speak for years.

Q. Did any of his nieces visit you? A. No, they have never visited me. I knew them. I have met them. They were very

kind to me at Mr Travers' death; offered to come on and all of that, but I have never visited them and they never visited me, We never troubled one another, because Mr. Travers didn't speak to his sisters, or had anything to do with his sisters, except Sister Lizzie. They had no connection at all, and know nothing about this horrid old property.

Q. And from the time you met him, until his death, you did not visit any of his sisters or relatives? A. I did not, except Sister Lizzie. I visitedher at the Visitation in Georgetown, often, and also in Georgetown and in Frederick, and spent two or three weeks with her, but I have never visited the other sisters; neither have they visited me.

130 Q. When was your first visit to her? A. After my father's death.

Q. Then, up to the time of his death, you didn't visit her? A. I did not.

Q. And she, of course, didn't visit you? A. Oh, no, nuns don't visit; but we corresponded.

Q. With whom did you correspond of his relatives? A. With his sister Lizzie. She is the only one of the family with whom Mr. Travers held communication.

Q. When did you firstwrite her? A. Oh, I have written her long years ago, I guess. When we lived in Bel Air.

Q. Have you any letters from her? A. Not very old letters. I have some few that I found the other day.

Q. Have you any letters written prior to James Travers' death? A. No, I don't think I have any at all saved. I have some—indeed only two or three.

Q. You never met her, did you, until after his death? A. No, I never met my sister Lizzie until after his death. Mr. Travers had not seen her, I guess, for 30 years.

131 Q. Where did you go upon leaving Baltimore? A. We went to Bel Air, Harford County, and lived there until we purchased this farm in Talbot County.

Q. And how long did you live in Bel Air? A. Almost two years.

Q. When was it that you went there? A. I think it was the latter part of 1865, or 1866.

Q. Can you give the month? A. It was in the spring. We rented this farm from a Mr. Moore, a prominent lawyer in Bel Air. We rented it through Mr. Henry Munichiser, in Baltimore. We rented this farm from Henry Munichiser, who is a lawyer, and agent for Mr. Moore, and I think we went there in the spring, and we lived there two summers, and then bought this property in Talbot County. We bought that in the fall. It was in 1866 when we went there, to Bel Air.

Q. We will get along better if you don't go quite so fast. How long did you live in Harford County? A. I think it was nearly two years. We lived there two summers. We lived there one fall

and the winter, and the following summer, and the following fall we purchased this farm in Talbot County. That was 1867, wasn't it? Mr. Colbert, was not that 1867?

132 Mr. COLBERT. Yes; that is all right.

Q. Did any of Mr. Travis' relatives live near Bel Air? A. Oh, no. Jennie was living in Piney Point at the time, and Mary, she lived south for years—I mean in South America.

Q. Hadn't he an aunt living in Harford County? A. No. No relatives at all. The only aunt he had was Sidney. His Aunt Sidney, who died years and years ago.

Q. Then you went to Talbot County? A. Yes, and lived there continuously until Mr. Travers health failed, and he thought the seashore would do him good, and we went to Ocean County, Point Pleasant, New Jersey.

Q. You lived in Talbot County upon a farm? A. Yes.

Q. How long was it before Mr. Travers' health became so that he went to New Jersey for the summer? A. Oh, a year or more. His health began to fail him.

Q. You mean a year or more before his death, or after he went down there? A. No; about a year or so before we went to Point Pleasant to live.

Q. Now, when was it that you first went to Point
133 Pleasant? A. In 1867. I think the deed is there where we bought the farm.

Q. Are you confusing Harford County with Point Pleasant? A. Oh, to Point Pleasant in 1883.

Q. You went to Talbot County in 1867, and your first visit to Point Pleasant was in 1883? A. Yes; went there to reside in 1883.

Q. Who constituted the household in Harford County? A. What do you mean—the head of the house?

Q. No; the members of the house. A. Mr. Travers. I rented the house myself from Mr. Munichiser, he is a lawyer. I went to see him, and I also went down in Talbot County to buy the farm, without Mr. Travers' seeing it at all. He liked it so much, though, that he went down and bought and settled there.

Q. My question was who constituted the household in Talbot County? A. Do you mean Mr. Travers—who was the head of the house?

Q. I mean, who was the family? A. Oh, the household,
134 I beg your pardon. I should have understood that. Why, Mr. Travers and my child and the servants and myself.

Q. Who were the servants—what were their names? A. One of them was Eliza Smith, and the other was named Mary Morgan.

Q. Are they living or dead? A. No. Eliza is not living I know. She lived with me some six years. No, she is dead some years ago. I don't know whether Mary Morgan is living or not. I have not been down there since I left. Oh, I have lots of people

in Talbot—neighbors and all that, that I can bring to testify to my having lived there.

Q. Do you know that it was common repute in the neighborhood where you lived that you were not married? A. No, I did not. I was always treated splendidly and received everywhere; had the very best friends and acquaintances, and always stood well with them.

Q. Did you ever know Mr. James Travers in your presence to declare that you were not married to him? A. No, not at all. He never did such a thing; never. Poor fellow, he would not do that.

Q. Was he a drinking man, Mrs. O'Brien? A. Yes, he drank some.

135 Q. Drank hard at times, did he not? A. Yes, sometimes.

Q. And at such times he got very much under the influence of liquor? A. Sometimes.

Q. You say you were not aware that your marriage to him was in question in the neighborhood? A. No, I was not. If it was, it is news to me.

Q. Did you claim to your neighbors upon that subject that you had been married by a regular ceremony? A. I claimed nothing. My neighbors did not ask me any questions about it. I was never questioned about it by my neighbors.

Q. You know a Mrs. Caroline Skinner, of Talbot County? A. I knew Miss Caroline Skinner. She was never married.

Q. Was she one of your near neighbors? A. No; she lived in Baltimore. Her brother, Mr. Augustus Skinner, was a near neighbor.

Q. Did you know Mr. Augustus Skinner's wife? A. Yes, I knew her very well. That was Mrs. Annie Skinner.

136 Q. Then you did know well Mrs. Annie M. Skinner, the wife of Augustus Skinner, who lived near you? A. Yes.

Q. How near did she and her husband live? A. It was just a roadway dividing our farms.

Q. Did you ever discuss with her whether you were or were not married? A. Dear me, no. Why should I do that? Why no; I would not think of such a thing.

Q. Did you not complain to her that the neighbors were talking to the effect that you were not married? A. Why, no. I never knew that the neighbors were talking that way, and she and I were the best of friends and very intimate. No, indeed.

Q. Mrs. O'Brien, did you not on one or more occasions while you were living at that place, when Mrs. Skinner was at your house, tell her that if the neighbors did not cease questioning your marriage that you would hang up in your parlor the marriage certificate? A. No, indeed, sir; I never thought of such a thing. As for talking about marriage to Mrs. Skinner, or Mrs. Anybody-else, why I never thought of such a thing.

137 Q. And you say no such conversation ever occurred with her? A. No, sir, never.

Q. Did you ever discuss with her at all the subject of your marriage? A. No, never. I never thought of such a thing, because I didn't have any occasion. No, indeed.

Q. When did you last see Mrs. Skinner? A. The last time I saw Mrs. Skinner it was 1883–1884. I think it was about 1884. I was down there about a year after the death of Mr. Travers.

Q. Have you had any written correspondence with her? A. Oh, Mrs. Skinner has visited me at Point Pleasant since then.

Q. Have you had any written correspondence with her? A. None whatever.

Q. When did shelast visit you at Point Pleasant? A. She visited me about—oh, it was before Mr. Travers' death—no, it was after Mr. Travers' death. She visited me in about 1883, 1885 or 1886. Say about 1886, I think.

Q. The name of the first of the two children you have given us was Ida, I think you stated? A. Her name was Ida.

138 Q. How old was she when she died? A. I don't really remember how old she was. I think she was three or four years old; something like that.

Q. Wasn't she nearly ten years old? A. It might have been. I don't know.

Q. Where did she die? A. She died in Talbot County.

Q. Didn't she die on a steamboat between Baltimore and Talbot County? A. She did not.

Q. Where is she buried? A. She is buried in Talbot County.

Q. In a private graveyard or church graveyard? A. Church graveyard. The Episcopal graveyard.

Q. Where was she born? A. She was born in New York.

Q. When did you go to New York? A. We went there on a visit.

Q. When—in what year? A. Well, before she was born. Really, I can't go back and give you those dates, and I don't like to say I believe so and give you a wrong date, because it is all obliterated from me. You know now I have tried to forget, and

139 I have forgotten.

Q. Why have you tried to forget the date of the birth of your child? A. Why it has been a closed past to me, and I didn't want to remember it, and I don't see any reason for you going into all this. What has she got to do with the Travers estate?

Q. And that is the only reason you can give us for forgetting your own age or the birth of your child? A. Yes, it has grown that way.

Q. How long were you in New York on that occasion? A. I was in New York about three months. We used to often go to New York.

Q. Where did you stay? A. We had apartments on Forty-fourth street. I don't know the number. I could not give it to you.

Q. Can you designate the house in any way, so we might know where it is? A. I cannot. If I went to New York, probably I could walk right to the house.

Q. Were you attended by a physician? A. No; I was attended by a midwife.

140 Q. What was her name? A. Sarah Johnson.

Q. And is she living or dead? A. I don't know. I don't know anything about her at all.

Q. Was there any other person in the house who knew you? A. Yes; the party from whom we rented the rooms.

Q. Who were they? A. Delincey was her name.

Q. Had you any acquaintance with them before going to New York to rent the apartments? A. Only passing acquaintance; that was all.

Q. Do you know where they are now? A. I donot. Probably I might trace them.

Q. We would be very glad if you would do so. A. Well, I could, if it would be of any——

Q. How long were you away from Harford County on that occasion? A. About three months.

Q. Then you returned to the farm? A. Yes.

Q. And how long was it before you again went away, if

141 you remember? A. No, I don't remember.

Q. You had no other child born alive after Ida? A. Annie, a sister, living. She is living now. Ida has been dead years ago.

Q. When was this daughter, Annie, born? A. Annie was born in New York too.

Q. Where in New York? A. On Twenty-third Street, I think it was.

Q. Will you give the number of the house? A. No, I could not tell you the number of the house.

Q. How long were you in New York on that occasion? A. I think about eight weeks. Six or eight weeks; something like that.

Q. Did you then return to the farm? Yes; we returned to the farm.

Q. What physician attended you on that occasion? A. Midwife. I never had a physician.

Q. What was the name of the widwife? A. Her name was Margaret. I think her name was Jackson—Margaret Jackson.

Q. Do you know where she is now? A. No; I could notsay. I have lost sight of all those. Yes, that was it, Margaret Jackson.

142 Q. Do you know whether she is living or dead? A. I do not.

Q. When you returned to Talbot County, did you have any nurse for the children? A. Yes.

Q. Who was it? A. Eliza Smith.

Q. She is the one who is dead? A. Yes; she died some years ago.

Q. Did you nurse the child yourself? A. No, we fed it on the bottle.

Q. Did you nurse the first child, Ida? A. Partly.

Q. Can you give us the name of any person who saw that child, Annie, in New York, before your return to Talbot County? A. No, I cannot, and yet I might by thinking it over. Probably might get plenty of names, don't you know, but at the present time I have forgotten a great deal.

Q. Mrs. O'Brien, isn't it true that the child Ida, of whom you have spoken, was an adopted child? A. No, it was not. It was my child. It was our child.

143 Q. Brought from near Easton, Maryland? A. No. Poor little thing. She is dead and gone.

Q. Isn't it also true that that child was not in Talbot County, to your knowledge, until she was a girl several years old? A. No.

Q. Isn't it true that Annie M., of whom you have spoken, was also an adopted child, who did not come into your household until she was about two years old? A. Oh, my gracious alive! Poor little thing! No.

Q. You have said you know Mrs. Annie M. Skinner? A. I do. I know Mrs. Skinner very well. I don't know whether she is living now or not. I haven't heard from her for years. She and I were very intimate.

Q. Did you know her son? A. Yes; I knew her son Larry. I knew her very well.

Q. Did you know Col. Frank Benson, of Talbot County? A. I don't know. Was he an old resident there?

Q. Yes, Madam. A. Benson—it seems—there was a Benson kept a grocery store, and I might have known it too, and forgotten. There is lots of people whom I knew and would forget. I

144 knew Benson that kept a grocery store, but I don't know whether he was called colonel or not.

Q. Did you know Mr. Frank Turner, clerk of the court? A. Yes; I knew him to speak to him, and knew him in a business connection. Knew him when I would see him.

Q. Did he live not far from you there? A. He lived at Easton. We lived about ten miles the other side.

Q. I now ask you, Mrs. O'Brien, if you did not tell at your house, about the time that this child, Annie, was first known there—say about 1879 or 1880—if you did not then tell Mrs. Annie M. Skinner that the child Ida was an adopted child? A. No, I didn't tell her anything of the kind.

Q. That you and Mr. Travers—— A. (Interposing:) Well, here I can't stay. My poor children——

(NOTE BY THE EXAMINER: At this point, and before the conclusion of the cross-examination, the witness arose from her seat, and, muttering something unintelligible to the Examiner, left the room and the building, and did not return, although the solicitors and the Examiner waited several minutes for her so to do.

Thereupon, there being no further witnesses to be examined, an adjournment was taken until further notice.)

J. ARTHUR LYNHAM
Examiner.

145 *Monday, December 1, 1902.* 3:30 o'clock p. m.

Met, pursuant to notice, to resume the taking of testimony on the part of certain defendants represented by Messrs. Hamilton & Colbert and Mr. J. Holdsworth Gordon.

Present: Messrs. Arthur A. Birney, Edward A. Newman, Charles H. Stanley and Fillmore Beall, representing the complainants and certain defendants, and Mr. Michael J. Colbert, representing certain defendants.

Whereupon—owing to the non-attendance of the witness, Sophia V. O'Brien, an adjournment was taken until further notice.

146 *Monday, January 19, 1903.* 4:30 o'clock p. m.

Met, pursuant to agreement, to resume the taking of testimony on the part of the defendants.

Present: Messrs. Arthur A. Birney and Edward A. Newman representing certain complainants and defendants, and Michael J. Colbert, Esq., representing certain defendants.

Thereupon—MICHAEL J. COLBERT, being first duly sworn, deposed and said as follows:

Shortly before the amended answers in this case were filed, and when it was suggested that counsel should stipulate that James Travers died without having married, and without lawful issue, I called upon Mrs. Sophia V. O'Brien at her house, in Philadelphia, and was informed by her that while no ceremonial marriage had taken place between herself and James Travers, they had agreed to be man and wife; that they had lived together as man and wife for many years, and had always recognized each other as such, and had been recognized in the several communities in
147 which they lived as husband and wife, and that Annie E. Travers was a daughter of both of them. Acting upon this information, the amended answers setting up the fact of Mrs. O'Brien's marriage to James Travers and the birth of lawful issue were filed. I communicated the information which I obtained from Mrs. O'Brien to Mr. Hamilton and, after some difficulty, secured Mrs. O'Brien's presence in Washington for the purpose of testifying. After her examination was interrupted by her departure from the city while under cross-examination, I endeavored to get her to return to Washington for the purpose of concluding her examination, but was unable to do so. I went to Philadelphia for the purpose of seeing her and called at her house, but was unable to see her, though I believe she was at home when I called. When I called at her house the servant, who opened the door, informed me that she was in, but upon sending up my name word came back

that she was not in, and after waiting for some little time I was compelled to leave. Being unable to get Mrs. O'Brien to return to Washington, I caused a commission to be issued to take her testimony in Philadelphia on Saturday, January 17th, 1903, at 2 o'clock p. m. I saw Mrs. O'Brien a few minutes before 2 o'clock on that day, and was then informed by her for the first time that
148 Annie Travers was not her daughter. She asked me what she should do in the matter, and I told her that all she could do was to tell exactly what the facts were. Until 2 o'clock on January 17th instant, I had absolutely no knowledge or information, other than what developed in the questions put to Mrs. O'Brien upon cross-examination in Washington, and the statements of opposing counsel as to what they expected to prove, viz, that Annie E. Travers was not Mrs. O'Brien's own child, and, so far as I know, I am sure that Mr. Hamilton and the Messrs. Gordon had no such knowledge. We all relied upon the information given to us in the first instance by Mr-. O'Brien as being correct.

In making this statement, I do not claim that any information communicated to me by Mrs. O'Brien, or any statements made by her to me when she was not on the stand, are in any degree competent evidence to prove any issue or fact in this case.

Mr. BIRNEY: Counsel for the complainants, and the heirs of Elias Travers, while not objecting to the making by Mr. Colbert of any unsworn statement as explanatory of the taking of the testimony of Mrs. O'Brien, object to the foregoing deposition as containing no matter which is competent in evidence under the issues in this case, and for the further reason that such deposition was taken after the expiration of the time limited by the order
149 of the Court for the taking of testimony under this issue.

MICHAEL J. COLBERT.

Subscribed and sworn to before me this 28th day of January A. D., 1903.

J. ARTHUR LYNHAM,
Examiner.

150 I certify that the foregoing depositions (comprising 49 typewritten pages) were taken down by me in shorthand, as an Examiner in Chancery, from the statements when and as uttered by the deponents thereof; that the same were thereafter transcribed and reduced by me into print, and thereupon subscribed in my presence by the witness, Michael J. Colbert; the deposition of the witness, Sophia V. O'Brien, not being so subscribed for the reason stated at the end of her said deposition.

I further certify that my fee of $35.00 for taking, certifying and returning said depositions has been paid to me by the defendants represented by Messrs. Hamilton & Colbert and that the same is just and reasonable.

And I further certify that I am not of counsel, nor in anywise interested in this case.

J ARTHUR LYNHAM
Examiner.

151 DEFENDANT EXHIBIT No. 1.

Mortgage from James Travers to Alexander Banning.

Filed January 29, 1903.

This Mortgage: made this 27th day of September in the year Eighteen Hundred and Sixty-seven by James Travers and Sophia V. Travers, his wife of Harford County in the State of Maryland *Witnesseth:* that for and in consideration of the sum of Eleven thousand Seven Hundred and fifty dollars due from me the said James Travers to Alexander Banning of Baltimore City in the State aforesaid: and for which said Travers has executed and delivered unto said Alexander Banning his Bond bearing even date with these presents: being the balance due on the purchase money of that farm or plantation known as Third-Haven, which said Alexander Banning and Maria S. Banning his wife, have this day conveyed by good and sufficient deed unto the said James Travers. In order to secure the aforesaid sum of Eleven thousand Seven Hundred and fifty dollars with legal interest thereon as hereinafter expressed this instrument is executed.

Now therefore in consideration of the premises: We the said James Travers and Sophia V Travers his wife, do grant and convey unto the said Alexander Banning his heirs and assigns for ever in fee-simple, all and singular that tract of land farm or plantation situate lying and being "Hopkins'" neck of Talbot County
152 known as Third-Haven, or by whatever name or names it may be called, whereon William B. Banning now resides; adjoining the lands of Andrew Orem Robert Fowler and the heirs of the late Robert Banning containing the quantity of Two Hundred Acres more or less, the title to which said land James Travers acquired under a deed from said Alexander Banning and wife bearing even date with these presents: and duly recorded among the land records of Talbot County, as by reference thereto will more fully and at large appear. *Provided* that until default in the payment of the sealed obligation, or any one of the instalments thereof, with interest on the whole debt to the payment of said instalment said Travers shall retain possession of the mortgaged premises as of his present estate therein. And it is agreed that the said James Travers his heirs, Executors, or administrators shall well and truly pay or cause to be paid to the said Alexander Banning his Executors administrators or assigns the said sum of Eleven thousand Seven

hundred and fifty dollars current money in manner and form following: that is to say the sum of Three thousand dollars on or before the first day of October in the year Eighteen hundred and Sixty-eight: and the sum of Three thousand dollars on the first day of
153 October in the year Eighteen hundred and Sixty-nine: and the sum of Three thousand dollars on or before the first day of October in the year Eighteen Hundred and Seventy: and the further sum of Two thousand Seven hundred and fifty dollars on or before the first day of October in the year Eighteen hundred and Seventy-one; with interest on the whole debt unpaid at the payment of the several instalments. And it is further agreed that the said Alexander Banning shall receive whenever tendered at any time during the year, any portion of said annual instalments; provided the sum so tendered shall not be less than Two hundred and fifty dollars exclusive of interest, on the whole amount of Mortgage debt unpaid at the time of such tender. And the said James Travers for himself his heirs Executors and administrators covenants with the said Alexander Banning his Executors administrators and assigns that he will during the continuance of this mortgage keep the mortgaged property insured for the sum of Twelve Hundred dollars paying the premiums thereon from time to time as they fall due, and that he will assign the policy of insurance to the said Alexander Banning, for his benefit in case of loss by fire;
154 and he further covenants in like manner, that should he fail in this particular and the said Alexander Banning pay the premiums for said insurance, the amount of the premiums so paid, with the interest thereon shall be a lien on the Mortgaged property, as though included in the first instance in the Mortgage itself. And the said James Travers for himself his heirs Executors and administrators further covenants with the said Alexander Banning his Executors administrators and assigns that he will pay all taxes assessments public dues or charges to be levied by law upon the property hereby Mortgaged. *Provided* that if the said James Travers shall pay or cause to be paid the aforesaid sum of money with the interest thereon as they respectively fall due and shall well and truly perform all the covenants herein set-forth then these presents shall be void otherwise to be and remain in full force and virtue in law.

Witness our hands and seals this day and year first above written
Witness JOS. A. ROBINSON.

JAMES TRAVERS [SEAL]
SOPHIA V TRAVERS [SEAL]

155 STATE OF MARYLAND }
Talbot County to-wit }

I hereby certify that on this 27th day of September in the year Eighteen hundred and Sixty-seven before the subscriber a Justice of the Peace of the State of Maryland in and for Talbot County

personally appeared James Travers and Sophia V Travers his wife and acknowledged the aforegoing Mortgage to be their respective Act.

And at the same time also personally appeared Alexander Banning the Mortgagee named in the aforegoing Mortgage and made Oath on the Holy Evangely of Almighty God that the consideration in said Mortgage is true and bona-fide as therein set forth.

JOS. A. ROBINSON, J. P

[Two $1 and two $5 stamps.]

156 BALTIMORE *24th February 1874*

Received of Mr James Travers the amount in full for the Within Mortgage to date

ALEX BANNING [SEAL]

157 DEFENDANT EXHIBIT No. 2.

Filed January 29, 1903.

Last Will and Testament of James Travers.

In the name of God, amen.

I, James Travers being of sound and disposing mind, do declare this to be my last will and testament.

Item. My just debts and funeral expenses, being first paid I hereby give, devise and bequeath in manner following, that is to say,

First. To my Brothers and Sisters, all my interest and property, however held, in the City of Washington and District of Columbia.

Second. To my wife, while she remains my widow, all my property of every description and character not hereinbefore disposed of with full power of disposition and alienation, provided, however, that in case, our daughter survives her, that all the property, not disposed of prior to my wife's decease shall be and become the property of our said daughter, and in the event of my wife's contracting another marriage, then it is my will that she shall possess and enjoy as of her own right, only one third of the property, then remaining and that the other two thirds shall be invested and held in trust for my daughter Annie, and paid to her upon attaining her majority. And furthermore should my daughter die without leaving a child or children, it is my will, that any property which she may be entitled to or enjoy under this will shall go to my two sisters Mrs. Sidney *Wy*inia Mitchell and Mrs. Mary Wynne, their heirs and assigns share and share alike.

158 I hereby appoint my wife, sole Executrix of this my last will and testament.

JAMES TRAVERS. [L. S.]

Signed, sealed and delivered in the presence of

EDWARD H. MURPHY.
MARY J. MILEY.
PETER BACKES.

159 DEFENDANT EXHIBIT No. 3.

Know all men by these presents, that I James Travers of Talbot County, State of Maryland, being in good health, and of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

Item. I give, devise and bequeath to my wife Sophy Virginia Travers all my household furniture, and my books and pictures, my carriages and farm implements, my horses and their harnesses and all my stock of whatsoever kind, to have and to hold the same to her, and her executors, administrators, and assigns forever. I also give to her the use, improvement and income of my dwelling house and farm, and its appurtenances, situated in Talbot County, State of Maryland, to have and to hold the same to her for and during her natural life; and from and after the decease of my said wife, I give and bequeath the said * * * e f (space indicated by stars cut out) * * * * (space indicated by stars cut out) children Ida and Annie share and share alike. And in case of either of them, or both shall die before the age of twenty one years or marriage, then I give the share of her so dying to the surviving children of my sister Sidney Virginia Mitchell of Georgetown, D. C. to be equally divided.

Item. All the rest and residue of my estate real or personal, or mixed of which I shall die seized and possessed, or to which I shall be entitled at the time of my decease, I give, devise and bequeath to my wife Sophy Virginia Travers, for her sole use. * * * * * * * * * * (space indicated by stars cut out.)

Lastly I do nominate and appoint my said wife sole executrix of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this eight- day of February, in the year of our Lord one thousand Eight hundred and eighty-one.

JAMES TRAVERS. [SEAL.]

160 Filed Mar. 30, 1903.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.
vs.
JAMES H. TRAVERS, ET AL. } Equity No. 21,484.

Be it remembered that pursuant to an order of reference to me passed in the above entitled cause on the 12th day of March, 1903, at an examination of a witness begun and held pursuant to notice to the Solicitors for the defendants, at which said examination there were present Arthur A. Birney, Edward A. Newman and Fillmore Beall, Esqrs., representing certain of the complainants; no

appearance for the defendants; personally appeared before me, J. Arthur Lynham, an Examiner in Chancery of said Court, the within named witness, who being called for and on behalf of the complainants, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters at issue in the above entitled cause, did depose and say what is hereinafter set out as stated by him.

J. ARTHUR LYNHAM
Examiner.

Deposition of George H. Rucker.

Filed March 30, 1903.

161 In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.
vs.
JAMES H. TRAVERS, ET AL.
} In Equity No. 21,484.

Alexandria County Court House, Alexandria County, Virginia.
Friday, March 20, 1903, 3 o'clock p. m.

Met, pursuant to notice, to take the deposition of George H. Rucker on behalf of the plaintiffs in the above entitled cause.

Present: Arthur A. Birney, Edward A. Newman and Fillmore Beall, Esqrs., representing certain of the plaintiffs; no appearance for the defendants.

Whereupon—GEORGE H. RUCKER, a witness of competent age, produced on the part of the complainants, and being by me first duly sworn, was examined and testified as follows:

Direct examination,

By Mr. BIRNEY:

Q Please state your residence and official position in the
162 County of Alexandria, Virginia? A My name is George H. Rucker; St Elmo, Virginia, Clerk of the County Court and Circuit Court of Alexandria County, Virginia.

Q Is Alexandria City in this County of Alexandria? A It is.

Q In what office are the official records of marriage licenses in the County of Alexandria kept? A In this office.

Q In this office of the clerk of courts? A Yes. I should say in my office.

Q Are those records in your official custody? A They are and are now before me.

Q How far back in years have you the complete records of marriage licenses issued in Alexandria County? A From the year 1801.

Q Have you here present the book of records showing the marriage licenses issued? A I have.

Q Have you at the request of counsel made an examination of the book of records of marriage licenses issued in this county of Alexandria between the years 1860 and 1878? A I have.

Q To ascertain if there is any record of a marriage license having issued to James Travers and Sophia V. Grayson, or Greason, or Grason? A I have.

163 Q What record, if any, did you find? A I did not find any.

Q Please state, succinctly, the manner in which the records are kept, and what the record shows generally as to marriage licenses? A Well, we keep our records alphabetically in the male name only, and I have examined every name—male name from the year 1860 to 1878 in the name of—to ascertain if there was a marriage license issued to James Travers, without finding it. I mean that in the index, about the record of marriage licenses, we index only in the name of the male party, but there is also a record of a name opposite the name of the male, showing the female.

Q Did you make any further examination than your examination of the index; if so what? A I examined every marriage license, or record of marriage license, between the years 1860 and 1878, in the book in which a record of the marriage licenses is kept, this being the book which is indexed in the index book of which I first spoke. This book shows a record of all licenses issued, whether the ceremony was performed or not.

Q Do you find in that book any record of the issue of a marriage license to the parties named, or either of them? A I did not.

Q If a marriage license had issued in the year 1865 in the
164 City of Alexandria, Virginia, would a record of that license appear in the book of which you have just spoken as having made an examination? A It would.

Q Are those records complete, Mr. Rucker? A They are.

NOTE: By consent of the Solicitors, Mr. M. J. Colbert, of Solicitors for the defendants, concurring, the signature of the witness was waived.

J. ARTHUR LYNHAM
Examiner.

165 I certify that the foregoing deposition (comprising 4 typewritten pages) was taken down by me in shorthand, as an Examiner in Chancery, from the statements when and as uttered by the deponent thereof; that the same was thereafter transcribed and reduced by me into print, and that thereupon the signature of the said witness was waived, agreeably to stipulation of counsel first had and obtained.

I further certify that I am not of counsel, nor in anywise interested in this cause.

And I further certify that my fee of $10.00 for taking, certifying and returning said deposition has been paid to me by the complainants, and that the same is just and reasonable.

J. ARTHUR LYNHAM
Examiner.

Auditor's Report.

166 Filed July 17, 1903.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL
vs.
JOHN H. TRAVERS ET AL
} Equity No. 21,484.

This cause was referred to me to state the account of the trustees and distribution of proceeds of sale. After due notice I proceeded with the reference, and it appearing that serious controversy existed as to the proper distribution of a portion of the fund, by agreement of the parties I stated the account of trustees and made a partial statement of distribution of the proceeds of sale, that report being filed on the fifth of July, 1901. Since that time the parties have prosecuted a litigation over the remaining fund, in the taking of proof and otherwise, and the subject-matter of the reference is again submitted by counsel for a complete report of distribution.

Nicholas Travers died about the year 1850, leaving a last will and testament and codicils thereto, copies of which are filed in this proceeding. The fund for distribution arises from sale of certain real estate situated in Square 291 in this city, and I set forth here so much of the said will as relates to the said real estate and its disposition.

In the first item of disposition the testator gives and devises to his son Elias Lot No. 2 in Square 291 and parts of Lots Nos. 9 and 10 in said square, both devises subject to the general provisions thereafter in the said will made in case of any of the sons dying without leaving wife or child or children.

167 In the second item the testator gives and devises to his son Joseph Travers and his heirs forever a part of Lot No' 5 in Square 291.

The third item of disposition in the will was a devise to his son Nicholas of property, no part of which was included in this controversy.

The testator gives and devises to his son James Travers and his heirs forever part of Lot No. 4 and part of Lot No. 3 in the said square 291 and two other parcels of ground in the same square, being parts of Lots 8 and 9, and the testator states in connection

with this that all of this devise was to be subject to the general provision thereafter in the said will made.

These several devises are followed by what the testator has referred to as the general provision, and which is in the following terms:

"With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my will, and I do order and direct, as a general provision, that if any of my sons should die without leaving a wife, or a child or children living at his death, then his estate herein devised to him, saving and excepting those portions thereof expressly granted and so named to be "in fee simple", and which they can sell and dispose of as they think fit, shall go, and be invested in fee, to my surviving sons and the child or children of such as may be dead, such child or children representing the share of the father—but if either of my sons shall, at his death, leave a wife either with or without a child or children, such wife shall be entitled to her dower rights and privileges."

The testator then makes devises of certain real estate, not including any part of Square 291, to his daughter Mary and to her
168 heirs forever in fee simple, to his daughter Elizabeth and to her heirs forever, providing for the disposition of the property so devised to her in case of her death without leaving a living heir or heirs of her body, and to his daughter Sidney Virginia a portion of the rents, issues and profits of certain other property, and then directs the disposition of his personal estate and all other real estate not in the said will devised and bequeathed, the proceeds to be equally divided amongst his sons and his two daughters Sidney Virginia and Elizabeth and to their children, share and share alike.

The testator made several codicils to the said will, the first of which makes some changes in the original gifts and devises to his daughter Elizabeth, the second revokes or changes gifts and devises of the original will, but without affecting the property in Square 291, except as to a portion on which he had built a brick house west of his own residence, which, by the codicil, he gave to his son Elias in fee simple, subject to an annual rent to be paid to his son Nicholas. By this codicil he also gave and devised to his granddaughter, Mary Wynne, Lot No. 2 in Square 290 in fee simple, and the third codicil revokes so much of previous disposition as affected the lots on which he had built the brick house west of his own residence. He gave said lot to his son James and his heirs, subject to the express stipulations and restrictions contained in the original will, wherein he declared that all and every portion of his real estate not devised by the use of the words "in fee simple" should be held by such devisees for life, and then according to stipulations and restrictions as therein contained and declared by said will.

169 The trustees in this cause prior to the sale of the property made a sub-division with the authority of the Court, and for convenience I note here that sub-lots 29, 30, 31 and 32 are included

in the portion devised to Joseph Travers and his heirs forever, but the devise does not contain the words "in fee simple".

Sub-lots 25, 26, and 33, sold by the trustees in this cause are included in the property devised to James Travers and his heirs forever, the devise not containing the words "in fee simple". Two other sub-lots, 24 and 34, are included in the same devise and have not yet been sold.

Sub-lots 27 and 28 were included in the devise to Nicholas Travers, son of the testator. The proceeds of these two lots have been distributed in full and are not now in controversy.

Joseph Travers died intestate in September, 1882, leaving a widow, since deceased, but no child or children or descendant of such surviving him. His heirs at law were his brothers, Elias and James, and his sisters. Sidney Virginia Mitchell, Mary Wynne and Elizabeth Travers.

James Travers died in October, 1883, having executed a last will and testament in which he in terms devised all his interest in property, however held, in this district, to his brothers and sisters, having by the same instrument devised to his wife the property of which he was possessed beyond the District of Columbia. At the time of his death one brother, Elias, survived him, and his three sisters.

Elias Travers, the last of the sons, died intestate in April, 1887. Mrs. Wynne, daughter of Nicholas Travers, died in February, 1892, intestate, leaving a daughter, Maria L. Reinhardt, as her only heir at law.

Mrs. Mitchell, also daughter, died in August, 1895, intes-
170. tate, leaving surviving her the daughters Margaret and Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer and Sidney Mitchell as her only children and heirs at law.

Elizabeth Travers, also daughter, died in October, 1897, leaving a last will and testament, copy of which is filed as an exhibit in this proceeding. Caveat being filed against the probate of the said paper, all of the parties in interest entered into an agreement and stipulation in settlement of the controversy, said agreement providing that one-sixth of the entire estate passing under the said will, or of which she died possessed, should be vested in John H. Travers, James W. Travers, Joseph Travers, Kate M. M. Owens, Amelia C. Travers and Sidney Travers, and that the remaining Five-sixths should be distributed and disposed of according to the terms and provisions of the said will.

The fund undistributed and now in the hands of the trustees is adversely claimed by the heirs of Elias Travers, upon the theory that by true construction of the will of Nicholas Travers the said Joseph Travers and James Travers were possessed of only a life tenancy in the property devised to them and sold in this cause, and that upon the death of Joseph the property so devised to him vested in his brothers James and Elias, and upon the death of James the

entire property vested in Elias, who died vested therewith, and that his heirs at law are now entitled to the same.

On the other hand it is contended by the heirs of Mrs. Wynne, Mrs. Mitchell and the estate of Elizabeth Travers that Joseph Travers having died leaving a widow, his heirs at law inherited from him an estate in fee simple in the property devised to him by the will.

It is further contended by the same parties that James Travers died leaving a widow and daughter surviving him,
171 whereby the devisees under his will acquired a title in fee simple to the property devised to him by his father's will.

The issue, therefore, the determination of which should control the proper distribution of the present fund, will be, first, the construction of what is termed the general provision contained in the will of Nicholas Travers, and the fact whether Joseph and James Travers each at his death left surviving him a wife or child.

It is claimed on behalf of the children of Elias Travers that the terms in which the said general provision of the will is phrased, towit, "without leaving a wife or child or children" should be made to read "leaving a wife and child", substituting the word "and" instead of the disjunctive "or". This claim is founded upon the assertion that such was the intention of the testator, and authorities are cited tending to show that in cases where the intent of the testator plainly appears, such substitution will be made.

The intent of the testator is to be gathered from the will, and the only portion of that instrument relied upon to sustain the theory of the complainants is found in a portion of what is termed the general provision, the surviving words of which are "but if either of my sons shall at his death leave a wife either with or without a child or children, such wife shall be entitled to her dower rights and privileges". It is argued that this provision is unnecessary if the word "or" is to be retained in the general provision, where it is used between the word "wife" and "child or children". Whether this provision for the wife in the absence of child or children was necessary or not, it is at the best mere surplusage, and is not, in my opinion, sufficient to establish the theory of the complainants as to the intent of the testator in the words of the general provision.

172 I do not, therefore, find in the will any elements of such intention on the part of the testator, but I find several reasons for assuming the contrary.

In the first place the testator uses the word "or" with evident deliberation. It is found between the word "wife" and the word "child", and again between the latter term and the word "children". He also uses the full term in two different parts of the general provision.

He also uses the same phrase "Wife or child or children" at the close of the first item of disposition in the will.

Again, the result of substituting the word "and" in place of the first "or" would result in depriving the child of any benefit if the wife should not be living at the death of the devisee, a result that certainly could not have been contemplated by the testator.

Upon the will itself, including the codicils thereto, and in the absence of any extrinsic proof of intention on the part of the testator, I am constrained to hold that the use of the word "or" was a deliberate intent upon his part and should remain.

It is conceded that Joseph left a wife surviving him, and in my construction of the will as just stated, I find that the heirs at law of Joseph inherited the property devised to him by the will of his father, and would therefore be entitled to the proceeds of sub-lots 29 to 32 inclusive, sold by the trustees in this cause.

173 The bill of complaint in this cause avers that James Travers died without leaving a wife or child, and the answers first filed did not deny this averment. Subsequently, leave of the Court being had, amended answers were filed by the defendants who claimed under his three sisters, Elizabeth Travers, Mrs. Wynne and Mrs. Mitchell, asserting that at his death James Travers left a wife and daughter. Proof directed to this issue so made up was submitted, from which I find the following facts:

On the 15th of August, 1865, a ceremonial marriage between James Travers and Sophie V. Grayson was perfomed in Alexandria, Virginia, by a person not authorized to perform such ceremony, and without the license required by the laws of that state. Immediately afterward the two went to Shrewsbury, in the State of New Jersey, where they remained for two years, and then after some stay in Washington, in the District of Columbia, and other places, they moved to Talbot County, Maryland, where James Travers purchased property. In part payment for this property he executed a deed of mortgage, in which James Travers and Sophie V. Travers, his wife, are recited as grantors. The deed was signed and sealed by both, and the said Sophie V. Travers acknowledged her execution of the document as the wife of James. This mortgage was duly recorded, and has from that time constituted a part of the public records of that county.

With some exceptional intervals, the two resided in Maryland as husband and wife for a number of years, finally locating at Point Pleasant in the State of New Jersey, where James Travers died in December, 1883.

During this time children were born to them, none of whom, however, were living at the death of Travers.

About the year 1881 James Travers prepared a will, in which he referred to and recognizes the said Sophie as his wife.

174 This will, however, was either cancelled or in part accidentally mutilated. Such as it is, it was filed as an exhibit in this reference.

On the 5th of October, 1883, while living at Point Pleasant, New

Jersey, James Travers executed his last will and testament, by which he makes the following disposition of his estate:

"Item. My just debts and funeral expenses being first paid, I hereby

Give, devise and bequeath in manner following, that is to say—

First. To my brothers and sisters all my interest and property however held in the City of Washington and District of Columbia.

Second. To my wife while she remains my widow all my property of every description and character not hereinbefore disposed of, with full power of disposition and alienation, provided, however, that in case our daughter survives her, that all the property not disposed of prior to my wife's decease shall be and become the property of our said daughter, and in the event of my wife's contracting another marriage, then it is my will that she shall possess and enjoy as of her own right, only one-third of the property then remaining, and that the other two-thirds shall be invested and held in trust for my daughter Annie and paid to her upon attaining her majority, and furthermore should my daughter die without leaving a child or children, it is my will that any property which she may be entitled to or enjoy under this will shall go to my two sisters Mrs. Sydney Virginia Mitchell and Mrs. Mary Wynne, their heirs and assigns, share and share alike.

I hereby appoint my wife sole executrix of this my last
175 will and testament."

This will was admitted to probate in the Probate Court of Ocean County, New Jersey, and letters testamentary thereon issued to the said Sophie V. Travers.

At the date of the alleged marriage in Virginia the code of that state provided that every marriage in the state should be under a license and solemnized in the manner provided in the statute. This statute also provided that no marriage solemnized by any person professing to be authorized to solemnize the same should be deemed or adjudged to be void, nor should the validity thereof be in any way affected on account of any want of authority in such person, if the marriage be in all other respects lawful, and be consummated with the full belief on the part of the persons so married, or either of them, that they had been lawfully joined together.

I have found the fact to be, as stated herein, that no license was issued for the marriage of James Travers and Sophie V. Grayson, and in the case of Offield V Davis, decided in the Supreme Court of Appeals of Virginia, in March, 1902, it was held that the enactment of the statute referred to wholly abrogated the common law in force in that state on the subject of marriages, and that no marriage or attempted marriage, if it took place in that state, should be held valid there unless it was shown to have been under a license and solemnized according to their statutes.

If the issue here presented affected property or family rights in the State of Virginia, it is probable that this pronounced judgment

of the Court of Appeals of that state would apply and hold the alleged marriage between James Travers and Sophie invalid, but the conditions confronting us in the present case are sub-
176 stantially different. Directly after the so-called ceremonial marriage these parties left the State of Virginia, and for at least two years resided within a jurisdiction whose laws upon this subject are unlike those of the State of Virginia, upon which the judgment of the Court of Appeals of that state was founded in the case cited. The parties never did return to the State of Virginia, so far as appears in evidence or otherwise in this cause. They did, however, locate in the State of Maryland, and with more or less temporary residences in other states, located in the State of New Jersey again, where James Travers died. The property to be affected by the determination of this issue is here in the District of Columbia, and I find that under the act of Maryland of 1777, chapter 12, it is provided that no person within this state (district) shall marry without such license as by this act is directed, or before the names of the parties intending to marry shall be thrice published in some parish church or chapel, etc. in the county where the woman shall have her usual residence, on three several Sundays, by some minister residing within the same county where the woman to be married usually lives, etc., under a penalty of five hundred pounds, current money. The section further provides that any minister who shall marry any persons without such license or publication shall forfeit five hundred pounds, current money.

The act of Congress of June 1, 1870, now found in section 718 and following of the Revised Statutes in force in the District, provides as follows:

"For the purpose of preserving the evidence of marriages in the District, every minister of the Gospel appointed or ordained according to the rights and ceremonies of his church may be licensed to celebrate marriages in the District."

177 The act then provides the form of the license, that it shall be issued by the clerk of the Supreme Court of the District, and prescribes the manner of preserving the record of such licenses.

Neither of these statutes are in form similar to that in force in the State of Virginia and relied upon in the case of Offield v. Davis. So far as the act of assembly of Maryland is concerned, it may be reasonably assumed that so far as quoted above it has been replaced by the act of Congress of 1870.

In the case of Meister v Moore, reported in the 96th U. S. at page 76, the court in its opinion deals very largely with the question presented here, and I quote liberally from the said opinion. After holding that a contract per verba de præsenti constitutes a marriage at common law, and that marriage is everywhere regarded as a civil contract, Justice Strong proceeds to say:

"Statutes in many of the states, it is true, regulate the mode of

entering into the contract, but they do not confer the right, hence they are not within the principle that that where a statute creates a right and provides a remedy for its enforcement, the remedy is exclusive. No doubt a statute may take away a common law right, but there is always a presumption that the legislature has no such intention unless it be plainly expressed. A statute may declare that no marriages shall be valid unless they are solemnized in a prescribed manner; but such an enactment is a very different thing from a law requiring all marriages to be entered into in the presence of a magistrate or clergyman, and that it be preceded by a license or publication of banns or be attested by witnesses.
178 Such formal provisions may be construed as merely directory instead of being treated as destructive of a common law right to form the marriage relation by words of present assent. And such, we think, has been the rule generally adopted in construing statutes regulating marriage. Whatever directions they may give respecting its formation or solemnization, courts usually hold the marriage good at common law to be good notwithstanding the statutes, unless they contain express words of nullity."

See also Bishop on Marriage and Divorce, section 283.

That case involved the construction and application of the Michigan statute, which is in the respects important here substantially the same as the act of the assembly of Maryland.

Conceding that the so-called marriage in Virginia did not, by reason of its ceremonial form, create a lawful relation of husband and wife, it cannot be denied that the proof concerning that ceremony establishes an agreement between the parties to accept each other as husband and wife. In other words, it established a civil contract of marriage good at common law, and being followed by a departure from that jurisdiction and residence in the State of New Jersey for a time immediately following and again at a later part of their lives, there can be no doubt, I think, that the status of these parties, following that alleged ceremony, was that of lawful wedlock.

At the death of James Travers the two were residing in the State of New Jersey as husband and wife, and to further establish or illustrate the lawful character of that condition in that state, I refer to the case of Atlantic City Railroad Company vs Goodin, 62 N. J. Law Reports, p. 394.

The substantial question in that case was whether the plaintiff was the wife of Goodin, who was killed by a train of the said railroad company, and suit for damages brought therefor by her.
179 It appeared that there had been a ceremonial marriage between the two many years before, but at that time Goodin had a wife, from whom he was separated. The parties from the time of that alleged marriage continued and were reputed to be husband and wife, and in 1892 the real wife died.

The court referringto cases previously determined in that state,

in which it was held that a contract of marriage per verba de praesenti amounts to an actual marriage and is valid, says:

"The plaintiff by her testimony made a prima facie case of such a marriage contract made directly after the first wife'e death. True, no witness was present, but there was not the slightest reason to doubt the plaintiff's story, and every reason to believe it. The defendant called no witness and in no way weakened the prima facie proof of such marriage." The court referring to an exception made to the refusal of the judge to charge the jury that the same proceeding was necessary to make a common law marriage as was entered into before disability was removed said: "This seems to mean that a ceremonial marriage was requisite, and of course the judge properly refused the request".

It seems unnecessary to cite authorities to establish the validity of a marriage per verba de praesenti at common law. Dr. Bishop holds plainly that in the absence of prohibitive legislation in this country, no more is required to constitute a legal marriage that that the man shall declare in words of the present tense that the woman is his wife, and that the woman shall assent.

Bishop on Marriage, Divorce and Separation, sections 299 and 313.

Coming to the element of proof to establish such a marriage in the present case, I refer to the case of Lessee of Jewell vs Jewell, 1st Howard, 219, in which the court uses this language:

180 "It was admitted that the parties had cohabited together for a long time, and that the defendants were the issue of that intercourse, and in order to prove that their mother was married to Jewell, the acts and declarations of the parties during their cohabitation were offered in evidence by the defendants (and were unquestionably admissible) to prove that during that time she was acknowledged and treated by Jewell as his lawful wife."

The evidence submitted here establishes the fact that from the date of the marriage in Virginia to the death of James Travers these two parties lived continuously together as husband and wife;

That in 1867 by a deed of mortgage of the property in Talbot County, Maryland, James Travers held Sophie out to the public as his wife by incorporating that announcement and recognition into the public records of the county; That at a later period he prepared a paper in the form of a will in which he distinctly and expressly recognized her as his wife; That shortly before his decease, in the State of New Jersey he prepared and executed in a formal manner his last will and testament, again recognizing her as his lawful wife, devising to her a considerable portion of his worldly estate, and appointing her sole executrix of his said will, and the fact that judicially in that state this recognition of her and disposition of the property to her and her appointment as the executrix of his will were recognized and sustained by a court of proper jurisdiction.

In argument here it is contended on behalf of the parties claiming that James Travers died without leaving a wife, that some evidence of public reputation is required to establish the fact of the common law marriage, and that this evidence could not be furnished
181 by the testimony of the wife. On this point I refer to the case of the State of Maryland v. Baldwin, 112 U. S. p. 490, in which Mr. Justice Field, stating the opinion of the Court, says: "That where no ceremonies are required and no record is made to attest the marriage, some public recognition of it is necessary as evidence of its existence, that the protection of the parties and their children and considerations of public policy require this public recognition; and it may be made in any way which can be seen and known by men, such as living together as man and wife, treating each other and speaking of each other in the presence of third parties as being in that relation, and declaring the relation in documents executed by them whilst living together, such as deeds, wills and other formal instruments. From such recognition the reputation of being married will obtain among friends, associates and acquaintances which is in itself evidence of a persuasive nature."

In view of these facts and conditions so thoroughly established, I find that James Travers at his death left a lawful wife surviving him, and no child or children, and that by reason of the survival of the wife the devise to him, which was an estate of inheritance subject to being defeated, remained, and the estate of inheritance passed by his will to his devisees.

The answers of some of the defendants, heirs and devisees of the three sisters assert the existence of an agreement made upon the death of James Travers between the two surviving brothers and the three sisters that the property in square 291 devised to Joseph Travers should be held equally between the sisters and the surviving brothers and that after the death of James the agreement was extended to include the property in the said square devised
182 to James. In support of this claim proof was introduced which established the following facts. Immediately after the death of Joseph Travers in 1882 the firm of Thomas J. Fisher and Company real estate agents in this City, began to collect the rents from the real estate which had been devised to Joseph including the lots in square 291 making these collections under powers of attorney and periodically distributing the rents equally between James and Elias Travers the surviving brothers and the three sisters after deducting the share of the widow of Joseph as doweress.

That after the death of James Travers the same firm began to collect the rents from the real estate which had been devised to him and distributed them equally to Elias Travers and the three sisters, according to the direction and disposition of the said property by his will.

That after the death of Elias Travers distribution of the rents from the property which had been devised to Joseph Travers and to James

was continued to those claiming under Elias and the sisters and as and after the sisters severally died the distribution was continued to those claiming under them either by will or by descent.

That during all of this period statements of account by the said real estate firm showing their several collections and distributions were made and furnished severally to the said distributees and checks in payment of the several shares delivered with such statements.

All of the collections were made by virtue of letters of attorney from Elias Travers and the sisters.

No exception or objection was made by either of the parties
183 to this method of distribution of the income of the property.

On the first of January 1886 Elias Travers the last surviving brother and Elizabeth, Sydney D. Mitchell, and Mary Wynne the three sisters, executed a lease to one Freeborn G. Smith of a portion of the property in this square which was devised to James Travers and in this lease the said grantors described themselves as "the only heirs at law of the late James Travers deceased." The lease was acknowledged by these parties and provided that the prescribed rent was to be paid to them and that at the end of the term the property was to be surrendered to them and their heirs. The lease also contained sundry covenants on the part of the lessors for themselves and their heirs.

Other facts appear in the proof here in the same line of treatment of the property and its income, and some evidence tending to show an intention by the several parties to the agreement to have the same reduced to writing and formally executed. No writing of that character has been introduced or found after search being made and the parties to the said agreement being all dead the establishment of the alleged agreement rests solely in the proof of the declarations and acts of the parties relating to the said property.

Objection being made by counsel to the admission of the evidence offered in support of the facts above recited the evidence was admitted by me for the purposes of this reference as being a part of the res gestae or the declarations and acts of the parties at the time of the alleged making of the agreement and the carrying the same into effect.

The conditions management and enjoyment of the property as here detailed extended over a period of twenty years and
184 it is now contended by the parties claiming under the three sisters that those claiming under Elias as set forth in the bill of complaint are estopped in equity from asserting as in the said bill that they are seized in fee of all the lots in square 291 devised to James and five-eighths of the lots devised to Joseph.

It is somewhat difficult to explain the part of James and Elias Travers in the receipt and enjoyment of the income of this property equally with the sisters if as now claimed the said James and Elias were first entitled as survivors to possession and enjoyment of the

portion of the property devised to Joseph and Elias thereafter entitled by right of sole survivorship to the possession and enjoyment not only of the property devised to James but also that devised to Joseph and I do not find in the proof offered here any reasonable explanation of this condition.

It is contended by the heirs of Elias Travers that there was no consideration for the making of this agreement on the part of either of the sons of Nicholas Travers. It is at least doubtful whether any money or any other valuable consideration would be necessary to support an agreement between brothers and sisters as to property derived from a common parent. But there were some questions originally as to the will of Nicholas Travers. In addition to this it is frequently held by the Courts that love and affection of members of the family would be a substantial and sufficient consideration.

185 Upon the whole proof submitted here in support of the alleged agreement and the subsequent conduct of the parties in the treatment of this property and its income I am of the opinion that the complainants and those claiming under Elias Travers, are equitably estopped from asserting that they are entitled to enjoy this property and its proceeds, independently as asserted in the bill of complaint. This finding may be unnecessary in view of my conclusions on the other questions presented.

The summary of these conclusions are a finding that under the true interpretation of the will of Nicholas Travers applied to the other conditions existing in the proof here, neither of the brothers took any portion of the said property by right of survivorship, that both James and Joseph died possessed of an estate subject to their disposition by will or in the absence of such disposition an estate that descended to their lawful heirs and in the accompanying schedule I have stated the distribution of the fund on that basis.

JAS. G. PAYNE *Auditor.*

186 SCHEDULE A.

Statement of Distribution of the Balance of the Proceeds of Sale of Sublots 29, 30, 31 and 32 in Square 291 Reserved in Report of Auditor filed July 5, 1901.

Amount reserved per Schedule B of said report.....		$61,042.40
Proportion of costs.....		121.60
		$60,920.80
To Maria Reinhard,		
One-third.....	$20,306.93	
Margaret Mitchell,		
One-fifth of one-third.....	4,061.38	

(Over.)

SCHEDULE A (Continued).

Elizabeth Mitchell,	
The same	4,061.38
Mary L. Wallis,	
The same	4,061.38
Alice V. Rohrer,	
The same	4,061.38
Sidney Mitchell,	
The same	4,061.38
Amelia C. Travers,	
One-sixth of one-sixth of one-third per stipulation	564.08
187 John H. Travers,	
The same	$564.08
Joseph Travers,	
The same	564.08
James W. Travers,	
The same	564.08
Kate M. M. Owens,	
The same	564.08
Heirs of Sidney Travers,	
The same	564.08
Margaret Mitchell,	
One-fifth of one-half remainder of one-third	1,692.24
Sidney Mitchell,	
The same	1,692.24
Elizabeth Mitchell,	
The same	1,692.24
Mary Wallis,	
The same	1,692.24
Alice Virginia Rohrer,	
The same	1,692.24
Sisters of the Visitation,	
One-half of remainder	8,461.22
Fractions	.07
	$60.920.80

JAS. G. PAYNE *Auditor.*

188 SCHEDULE B.

Statement of Distribution of the Balance of Proceeds of Sale of Sub-lots 25, 26, and 33 Reserved by First Report of Auditor.

Balance reserved per Schedule F of Report filed July 5, 1901	$70,894.56

SCHEDULE B (Continued).

One-half of costs and charges		121.60
		$70.772.96
To Maria Reinhardt, One-third	$23,590.98	
Margaret Mitchell, One-fifth of one-third	4,718.19	
Elizabeth Mitchell, The same	4,718,19	
Mary L. Wallis, The same	4,718.19	
Alice V. Rohrer, The same	4,718.19	
Sidney Mitchell, The same	4,719.19	
Amelia C. Travers, One-sixth of one-third	655.30	
John H. Travers, The same	$655.30	
Joseph Travers, The same	655.30	
James W. Travers, The same	655.30	
Kate M. M. Owens, The same	655.30	
Heirs of Sidney Travers, The same	655.30	
Margaret Mitchell, One-fifth of one-half of remainder of said one-third	1,965.91	
Elizabeth Mitchell, The same	1,965.91	
Mary L. Wallis, The same	1,965.91	
Alice V. Rohrer, The same	1,965.91	
Sidney Mitchell, The same	1,965.91	
Sister of the Visitation, The remainder	9,829.58	
Fractions	.10	
	$70,772.96	

JAS. G. PAYNE *Auditor.*

190 SCHEDULE C.

Costs and Charges.

Additional costs per transcript	$33.20
Examiner defendant's testimony	60.00
Auditor's fees and costs	150.00
	$243.20

JAS. G. PAYNE *Auditor.*

191 *Travers vs. Trevers.*

WEDNESDAY, *December 11. 1901*, 11 A. M.

Hearing pursuant to notice. Present Messrs. Gordon, Stanley, Newman, and Beall.

By Mr. W. A. GORDON,

I think that it would be well to call this as follows—Admissions by counsel representing the Heirs of Elias Travers, and by counsel representing the other parties, in the Estate of Elizabeth Travers, and the Heirs of Mitchel-, and Heirs of Wynne.

That the parties to the bill, with the exception of Annie Travers, were all parties interested in the property at the time the decree was passed.

That Sidney Travers has since died intestate, leaving Charles E., John, Joseph, and James W. Travers. and Kate M. M. Owens, his heirs. The above named parties, with Sidney Travers, were the children and heirs at law of Elias Travers who was a son of Nicholas Travers Senior. Nicholas Travers Senior died testate, leaving Elias, Nicholas, Joseph, and James Travers, Mary Wynne, Sidney v. Mitchell, and Elizabeth Travers, his children and heirs.

That the will of Nicholas Travers Senior, of which a compared copy is filed in the case. and which was admitted to probat*r*, is already in evidence and a certified copy will be filed hereafter if *os* desired.

That Nicholas Travers Junior, died unmarried and intestate during the contest of the will.

That Joseph Travers died about the 12th. of September, 1882, intestate, leaving a widow who died before the filing of this case and leaving no children.

192 That James Travers died in October, 1883, testate, never *n*aving married, and by his will devised his property equally to his surviving brothers and sisters.

That Elias Trevers died in the 29th of April, 1887.

That Mary Wynne died on the 7th. of February, 1892.

That Sidney V. Mitchell died on the 17th. of August, 1895.

These parties died intestate and their heirs at law are the parties to the bil- and their relationship is shown in the preceedings.

That Elizabeth Travers died on the 14th. of October, 1897, and a copy of her will is to be filed if required.

That an agreement dated June 8th. 1900, in the matter of the estate of Elizabeth Travers was duly made and a c*l*py there of will be filed if made necessary and required.

That devise to Joseph Travers in the will of Nicholas Travers Senior embraced the land contained in sub-lots 29, 30, 31, and 32, of the Trustees' Subdivision of Square 291.

In the Auditor's account of distribution a certain amount is retained which is claimed by th*r* heirs of Elias Travers and also claimed by the heirs of Mrs. Wynne and Mrs Mitchell and the est*s*te of Elizabeth Travers or the parties interested in it.

That the d*i*vise to Nicholas Travers Junior in the will of Nicholas Travers includes lots 27, 28, in the Trustees' Subdivision of Square 291. The proceeds of that sale have been distributed in full.

That the devise to James Travers by the will of Nicholas Travers Senior includes lots 24, 25, 26, 33, and 34, in the Trustees' Subdivision of Square 291. Of these lots Nos. 25, 26, and 33, have been sold, and lots 24, and 34, still remain unsold.

193 All this property, including the proceedsfrom the lots sold, is claimed by the heirs and children of Elias Travers, and it is admitted that they are entitled to one-fourth thereof, and one-fourth of the proceeds of the lots sold, which is retained and undistributed, it is claimed by the heirs and children of Elias Travers, and as opposed to their claim, is all claimed by the heirs of Mary Wynne, Sidney Verginia Mitchell, and the estate of Elizabeth Travers.

These admissions are subject to ratification by Mr. George E. Hamilton for the parties represented by him in this cause.

Mr. Hamilton states that he is not prepared to unite in the admissions that James Travers died, never having married, without further consultation with his clients in this cause.

194 *Travers vs. Travers.*

December 18, 1901—11 A. M.

Hraring pursuant to adjournment.

Present Messrs, Stanley, Newman, Gordon Beall and Hamilton.

Mr. Newman states that he wished to offer in evidence the following deeds, copies of whish will be furnished later if desired.

Mr. Hamilton reserved the right to object when the deeds have been produced and examined.

Mr. Newman, This is our case, with the exception that we reserve the right to prove the facts in respect t*p* James travers, That is the question as to whether he died leaving any children. There is to be a conference *no* that point. Our claim is that we are entitled to $\frac{3}{4}$ of the proceeds of sale realized from lots 29, 30, 31,

32, less the amount already distributed to us out of such proceeds, by the Auditor's report heretofore filed. We claim all the proceeds of sale of lots 24, 25, 26, 33, 34, what has been distributed to us by said Auditor's report.

Mr, Stanley, That is the claim of the surviving children of Elias Travers,

Mr, Ha-ilton, we would like to have a particular statement of the groundsof the claim, it does not appear on the bill specifically, we would like to know on what ground that claim is made in
195 order that we may meet specifically the claims made. We are without any proof that would indicate that, and would like to have some statement in that regard.

The Auditor.—Unless these deeds furnish something.

Mr. Hamilton.—No Sir, they do not.

Hearing is then adjourned to December 30, 1901, at 11 O'clock.

196 Monday, December 30, 1901, at 11 A. M.

Hearing pursuant to adjournment.

Present Messrs. Stanley, Gordon, Hamilton, Newman and Beall.

Mr. Hamilton states that after consultation with the parties represented by him in this cause, he is unable to unite in the admission that James Trevars died, never having married.

He further states that he is informed that the said James Travers was lawfully married, and that of said marriage there was born the defendant Annie E. Travers, and that it is his instruction and purpose to apply to the Court for leave to file an amended answer on behalf of the defendants represented by him, setting forth the fact of the said marriage and berth of issue still living, and for that purpose request a further pos-ponement of proceedings in *in* the reference.

The request of Mr. Hamilton for pos-pon-ment is granted.

By conse-t of counsel the hearing is further adjourned to Wednesday, January 8, 1902, at 11 O'clock A. M.

197 Wednesday, January 8, 1902—11 A. M.

Hearing pursuant to notice. Present Messrs. Stanley, Gordon & Gordon, G. E. Hamilton, Newman and Beall.

Mr Newman filed a certified copy of the will of Nicholas Travers Sr., and the record of the proceedings thereon in the Orphans Court.

Whereupon the reference is adjourned subject to notice.

Thursday, January 8, 1903. 1 P. M.

Hearing pursuant to notice.

Present were Messrs. Gordon & Gordon, Hamilton colbert, Birney, Newman and Stanley.

Mr. HAMILTON. We offer in evidence the certified copy of the will of James Travers.

Mr. STELLWAGEN having been sworn, testified as follows:

Mr. HAMILTON:

Q. You are a resident of the District of Columbia and real estate agent? A. I am.

Q. How long have you been in the real estate business? A., I have been a member of the firm of Thomas J. Fisher and Company since 1878.

Q. You are still a member of that firm? A. Still a member of that corporation.

Q. The firm was incorporated when? A. The firm was incorporated three years ago.

Q. At the time that you became a member of the firm of Thomas J. Fisher & Co., who was the other member of the firm? A. Thomas J. Fisher himself.

Q. What was the firm's designation? A. Thomas J. Fisher & Co.

Q. Was the membership of the firm subsequently enlarged? A. It was enlarged by taking in Thomas M. Gale.

Q. That was about when? A. 1880 or 1881.

Q. Prior to 1882 were you, your firm *i* mean, the agent of either Elias or James or Joseph Travers? A. We were the agents

199 of James Travers.

Q. Did you subsequently become the agents of either of the others, Joseph or Elias? A. We were never the agents of Joseph or Elias during their life time.

Q. Did you ever become the agents of the property of either Joseph or Elias after their death A. We became the agents of the estate of Joseph after his death, also for the collection of the rents of the estate of Elias after his death.

Q. When did you have anything to do with the property of Joseph? A. After his death.

Q. And when was that? A. That was in 1882, some time in 1882, I think.

Q. What did you have to do with the property of the estate of Joseph in 1882? A. Looked after the collection of the rents and remitted the proceeds

Q. That is, you collected the rents from the property and distributed those rents? A. Yes.

Q. To whom did you distribut- those rents? A. Distributed them in the case of Joseph, who was the first to die, to his brothers Elias and James and to his sisters, Mra. Wynne, Mrs Mitchell and Sister Mary Agatha, five, That was after the dower of the widow was paid. There was a dower rig*th* to Joseph's widow and after that the distributu*in* was made.

200 Q. How did you make distribution? A. At stated intervals we made a statement and sent checks to the verious parties in interest.

Q. Did you press copy those statements? A. We did.

Q. Have you a press copy of the first statement A. I have.

Q. Have you in such shape that you can refer to it? A. I have the first statement sent out by me in 1882.

Mr. HAMILTON. We offer the original statement in evidence.

Mr. BIRNEY. I object to this as incompetent as not having any probative force against the complainant.

Mr. STANLEY. I object also on the same ground on behalf of the defendants represented by me.

The AUDITOR. The papers will be filed, the objection to be passed upon hereafter.

Mr. HAMILTON.

Q. The Elizabeth Travers named in this statement is she known in this proceeding as Sister Mary Agatha? A. She was identical with Sister Mary Agatha, the same person.

Q. Mr. Stellwagen. at stated intervals were similar reports made by you to the parties? A. They were and have continued to be made up to very recently.

Q. They were in like form subsequently from the date of this account until the death of James Travers? A. They were written usually quarterly.

Q. After the death of James Travers did the statement sent out include the property in Washington belonging to the estate of James Travers? A. After the death of James Travers his estate was treated on our books separately and separate statements
201 sent out for that and distribution made to the four remaining heirs instead of five, Elias, Mrs. Wynne, Mrs. Mitchell, and Elizabeth Travers.

Q. All of the estate of James Travers?

The question was repeated and the answer was "Yes."

Q. Did you make a separate statement for the estate of James? A. We made separate statements.

Q. And what distribution did you make of the rents collected from the estate of James? A. Distributed them in equal shares to Elias, Mrs. Mitchell Mrs. Wynne and Elizabeth Travers.

Q. And what continued down to a short time ago? A. Until quite recently, until the recent sale of the property by the trustees, until some time in the spring of 1901.

Q. In regards to the parts not sold have you anything to do with them? A. We still collect the rents from the property unsold belonging to these estates the three parties, James, Joseph, and Elias. I don't know the ownership of each piece unless I refer to the book, but we still continue to collect the rents as we always have. I think there are still unsold lots on Pennsylvania Avenue between 12th and 13t-.

Q. Now under what authority, going back to May 1883, the time

of the first distribution, under what authority were acting? A. Under the authority of powre of attorney executed at that time by the various parties.

Q. And under what arangements, if you know, were these
202 powers of attorney were given you? A. The power of attorney were executed if I remember singly by the parties in interest.

Q. By the parties in interest, you say? A. Yes.

Q. Now I ask you as to any direction or agreement regarding those powers of attorney?

Mr. BIRNEY and Mr. STANLEY. We object as incompetent and irrelevant

Q. By whom were these powers of attorney prepared? A. They were prepared by myself.

Q. By what direction or instruction? A. By the direction of Thomas J. Fisher the Senior member of my firm.

Q. What was the nature of that instruction?

Mr. STANLEY and Mr. BIRNEY. We object as incompetent.

The AUDITOR. The objection is sustained.

Q. Mr. Stellwagen, will you look at these powers of attorney and see if they are the ones you referred to? A. Yes Sir, these are the ones.

Mr. HAMILTON, We offer in evidence the powers of attorney from Sidney D. Mitchell to Thomas J. Fisher & Company, dated December 18, 1882, from James and Elias Travers to Thomas J. Fisher and Company dated the 25th of October 1882, and from Elizabeth Travers dated December 18, 1882, the one from Mrs. Winne is mislaid, but I will offer it at a subsequent time.

Mr. BIRNEY, and Mr. STANLEY. We object incompetent irrelevent and no probative force.

The AUDITOR. The papers will be filed subject to the objection which will be passed upon hereafter.

Q. Mr. Stellwagen, will you look at this paper and see if you recognize it and in whose hand writing it is? (handing witness
203 a power of attorney from Sidney D. Mitchell, Mary Wynne, Elizabeth Travers, Mary E. Travers, Joseph Travers James Travers, C. E. Travers, S. Travers and Katie Travers and Katie M. Owens) A. Yes, it is written in my own hand writing.

Q. It was prepared by you? A. It was.

Q. Executed by the parties to you? A. It was.

Mr. HAMILTON. I offer this in evidence.

Mr. STANLEY and Mr. BIRNEY. Objection is made on the ground hereinbefore stated in the objections to the previous papers offered.

The AUDITOR. The paper will be filed the competency to be determined hereafter.

Mr. HAMILTON.

Q. Mr. Stellwagen, you will look at these papers and see if you have any knowledge of them? (showing witness a proposal from Jacobs Brothers, and lease to Jacobs Brothers) A. Yes Sir, I remember this paper, the letter from Jacobs Brothers, also the second paper which is a lease with Jacobs Brothers,

Q. Were you familier with the signature of Elias Travers? A. I was.

Q. Is that the signature of Elias Travers to the postscripts to the offer of Jacobs Brothers? A. It is.

Q. And was the lease I hand you a lease executed in pursuance of the instruction given? A. It was.

Mr. HAMILTON. I offer the proposal from Jacobs Brothers
204 for lease of certain property in evidence.

Mr. BIRNEY and Mr. STANLEY. We object to the document as incompetent and immaterial.

The AUDITOR. The paper will be filed subject to the objection which will be determined hereafter.

Q. Did you prepaer this paper? A. We did.

Q. and you have just stated that it was under the approval of the Travers heirs that ypu prepared it? A. Yes.

Q. This is the lease that was prepared? A. Yes.

Q. Was the lease duly executed by the parties? A. It was.

Q. Those are their signatures? A. Those are their signatures.

Mr. HAMILTON. I offer this lease in evidence.

Mr. BIRNEY and Mr. STANLEY. We object to the lease offered in evidence on the ground hereinbefore given in prior objections and for the further reason that the property mentioned in the lease and in the proceeding proposal of the Jacob Brothers is not property with which this litigation is concerned.

The AUDITOR. The paper will be filed under the same conditions as the paper previously offered to be filed.

Q. Will you look at that paper and see if you recognize it? (showing witness a lease from Thomas J. Fisher & Co., agents of the Travers heirs to the Pennsylvania Railroad Company.)
205 A. Yes Sir, I recognize it.

Mr. HAMILTON I offer that lease in evidence.

Mr. BIRNEY and Mr. STANLEY. We object to this lease upon the ground hereinbefore stated in the previous objections, except the last ground in the last objection.

The AUDITOR. the paper will be filed under the same conditions as the previous papers.

Q. From the death of Joseph Travers down to Spring to 1901 your firm acted as the agents for the property of Joseph Travers in the District of Columbia? A. It did.

Q. You attended to the letting of that property? A. We did.

Q. When you applied for instruction to whom did you make application. A. During Elias Travers life time we communicated with him about matters generally and with these ladies from time to time.

Q. And acted with regard to the property for them all as you had in regard to the distribution of the rents? A. We did and took their joint directions, and we paid the taxes on their property.

Q. Deducting it proportionally from each share, of course? A. Yes.

Q. From the death of James down to the Spring of 1901 you pursued a similar line of conduct? A. We did the exception then that we devided it into four parts instead of five, Joseph having died in the meantime.

Q. Mr. Stellwagen. after you began to act under the powers of attorneys in the manner that you have stated did you aver re-
206 ceive from any of the parties, the Travers people, the heirs, any direction to proceed contrary to the rule that you have said that you had followed? A. We never did.

Q. these parties were in communication with your office? A. Continuously.

Adjourned to either 1 O'clock Friday January 16 or 10 O'clock Saturday January 17, 1903.

207 Friday, January 16, 1903, 1 P. M.

Hearing pursuant to adjournment.

Present Mr. Hamilton, Mr. Colbert, and Mr. W. A. Gordon and Messrs Birney, Stanley, and Beall.

Mr. E. J. Stellwagen was recalled to the stand.

Mr. W. A. GORDEN. I offer in evidence a certified copy of the lease of Elias Travers, Elizabeth Travers, Sidney V. Mitchell, Mary Wynne and Freeb[illegible] G. Smith, recorded in liber 1168 folio 342 of the land records of the District.

It is agreed between counsel that the property mentioned in that lease is identical with lots 25 and 33 of the trusteees subdivision in square291 and was also known as Nos. 1225 Pennsylvania Avenue and 1216 E Street N. W.

Counsel for the complainant and Mr. Stanley for certain of the defendants object to the lease offered on the ground that it is immaterial and irrelevant to the issue.

The AUDITOR. It is filed subject to the objection to be passed upon later.

Q. Mr. Stellwagen, you testified that the collection of the rents from thr property belonging to the estate of James and Joseph Travers was in the hands of Thomas J. Fisher & Company? A. I did.

Q. That you collected the rents and made distribution thereof? A. I did.

Q. In connection with that did you furnish statement from time to time to the various parties of the rents collected?

Mr. BIRNEY, I object as already gone over.

Q. In connection with the management of the business,
208 did you write letters from time to time in addition to the state- you furnished these parties? A. I did.

Q. Will you please look at that paper? (handing witness a paper) was it written by Thomas J. Fisher & Company? A. It was written in the name of Thomas J. Fisher but written by me with my own pen.

Mr GORDON. I offer that paper in evidence.

Mr. BIRNEY. I object as clearly incompetent for any purpose.

Q. At whose direction did you write that? A. Thomas J. Fisher. He should have written it.

Q. He was the head of the firm? A. He was the head of the firm, he had the interviews with Elias Travers, I had none.

THE AUDITOR. The paper can be filed subject to the objection.

Q. Look at that paper and see if that also was sent from the office of Thomas J. Fisher? (handing witness a letter dated Washington, 18th of April, 1884 addressed to Sister Mary Agatha, Convent of Visitation, Fredericksburg, Maryland and signed Thomas J. Fisher & Company) A. It was

Q. By whom written? A. By me.

Mr. GORDON. I offer that paper in evidence.

Counsel for the complainants and Mr. Stanley object to the admission of the paper as incompetent for any purpose.

THE AUDITOR. The paper will be filed subject to the objection.

Q. Mr. Stellwagen you stated that you furnished from time to time statements of collections and disbursements? A. I
209 did.

Q. Were those, statements furnished to all of the parties, is that the coatom of the firm? A. That is the custom of the firm to furnish a statement accompanying every disbursement of funds of that character when we disburse funds, every body who gets a share of those rents gets a statement, we have always done so.

Q. Will you look at that statement, it is a statement of the rents for three months ending the 31st of January, 1884? A. Yes, that is correct, Sir.

Mr. GORDON. We offer that in evidence.

Mr. BIRNEY. I object on the same grounds, heretofore stated.

The AUDITOR. These paper- will be filed subject to the objection

Q. Will you look at that paper and read that entry of disbursement there? A. W. B. Webb for legal services $400.

Q. What does that show Mr. Stellwagen?

Mr. BIRNEY. I object.

Q. Does that show a payment

Mr. BIRNEY. I object.

The AUDITOR. The objection is sustained.

Q. Did you know Mr. William B. Webb? A. I was a law student in his office.

Q. Have you any personal knowledge of whether or not Mr. Webb was attorney in connection with the estate of James and Joseph Travers?

Mr. BIRNEY. I object as in competent.

A. I know that Mr. Webb was attorney for Elias Travers but whether for Joseph and James I do not know. I know also that he visited Elias Travers in company with Mr. Fisher

210 Q. Do you know whether or not Mr. Webb was the attorney for Elias Travers immediately after the death of Joseph or James Travers? A. I know that he was connected with this property and made many visits to Elias Travers who I think at that time lived at Savage Station.

Q. Are you acquainted with the handwriting of Mr. Webb? A. Only in a limited way, I think I should know it but I do not know it sufficiently well to swear to it.

Mr. COLBERT, It is conceded that the letters now offered in evidence are in the hand-writing of the late William B. Webb and are signed with his signature. These letters are dated December 8, 1882, March, 3, 1883, December 7, 1882, November 23, 1882, December 5, 1882, December 19, 1883, February 1884, November 17, 1883, May 28, 1883, February 13, 1883, August 28, 1883 and December 23, 1882 these are offered in evidence.

Mr. STANLEY and Mr. BIRNEY. I object to these letter- as irrelevant and incompetent.

The AUDITOR. Filed subject to the objections

Q. Mr. Stellwagen, under whose instructions did you distribute these rents after the death of James, James died before Joseph. A. All the distribution were made under the direction of Mr. Thomas J. Fisher, head of the firm.

Q. Do you know from whom Thomas J. Fisher received his instructions in regard to these distributions? A. I know that Mr. Fisher and Mr. Webb made many trops to Savage Station to see Elias Travers and right after those trips and those interviews these distributions of the rents were made.

Q. During the time the firm disbursed the rents did Elias

Travers visti the office of Thomas J. Fisher? A. Not to my knowledge.

211 Q. How was the business of the distribution of the proceeds of the rent conduced with Elias? A. The business with Elias Travers was conduced by correspondence, the only exception being when he was personally visited by Mr. Fisher.

Cross-examination.

By Mr. BIRNEY.

Q. Mr. Stellwagen when did you enter the office of Mr. William B. Webb. A. About 1875.

Q. Can you fix the date within the year with any more certainty? A. I graduated from the Columbia Law School in 1875 and shortly thereafter I went into Mr. Webb's office together with John C. Poor, and Harry McFarland the present commissioner

Q. How long did you remain there? A. Not over six or eight months, I should think

Q. Then you went into the office of Thomas J. Fisher? A. No. not immediately, I was in Wyoming, when I came back I went into the real esrate business myself on F street between 5th and 6th streets and later on 7th street between E and F streets in the office of M. M. Rohrer, in 1878 Thomas J. Fisher returned to Washington and the firm of Thomas J. Fisher & Company was formed and I was the junior member from its foundation.

Q. During the time that you were in the office of William B. Webb was he Elias Traver's attorney? A. I had no knowledge of that fact.

Q. Did you have any knowledge of any relations between William B. Webb and Elias Travers, as attorney and client up to the time you entered the office of Thomas J. Fisher A. I did not

Q. Do you know who was the attorney for Mrs. Wynne in

212 the matter of the Travers estate. A. I have no recollection of that.

Q. Do you know who was the attorney for Mrs. Mitchell? A. My impression is that Mr. Webb represented all of them but I could not swear to that for my recollection is very hazy in regar- to that, it was a long time ago.

Q. Do you recall who, acted as attorney for Sister Mary Agatha? A. At that time she was in a convent in Fredericksburg Maryland and some lawyer in Maryland made some inquiries about this estate, I think it was McSherry, whether he represented the convent or not, I could not say.

Q. Do you recall that William B. Webb was attorney for Sister Mary Agatha and for Mrs. Wynne? A. I do not, my impression is that he represented all the interests in this arrangements that was made.

Q. Were you ever present at any of the interviews between Mr. Webb and Elias Travers. A. I never was.

Q. What personal knowledge have you that the relations of Attorney and client existed between William B. Webb and Elias Travers? A. Just exactly to the extent that I have heretofore stated. Mr. Webb and Mr. Fisher had a number of conversations in my officein my presence discussing the estate and they left the office several times saying they were going to Savage Station and coming back saying they had been to Savage Station.

Q. Did you know Richard P. Jackson an attorney of Georgetown A. I did.

Q. Do you recall meeting him in connection with this estate of Travers? A. I recall the fact that he formally collected the

213 rents for the Travers estate, and after his death they were collected by L. F. Clark who was not a lawyer at all, but a paper hanger.

Q. Was not Mr. R. P. Jackson attorney for Elias Travers? A. Not to my knowledge, he collected the rents if that made him an attorney for Travers, he possibly was, but I have no knowledge of it.

Adjourned to Friday January 23, at 2 P. M.

214 Friday, January 23, 1903, 2 P. M.

Hearing pursuant to adjournment.

Present Messrs Colbert, Birney, Gordon, Stanley and Beall.

Owing to the absence of Mr. Hamilton an adjournment was taken to wednesday at 3 P. M.

215 Friday, Feb. 6, 1903 at 2 O'clock

Hearing pursuant to adjournment

Present Messrs Gordon, Colbert, Birney Stanley, Newman, Beall

Messrs Gordon and Colbert are duly sworn.

Mr. GORDON testifies as follows: I am one of the counsel for the Sistors of Visitation in Georgetown, claiming under the will of Elizabeth Travers. Having received information that some papers was in existence between the heirs of Nicholas Travers Sr. and her in regard to the property in question, as counsel I made every effort through the parties who had charge of the papers of Elizabeth Travers for that agreement. The papers at the Convent of Visitation at Georgetown and Frederick where Elizabeth Travers had formerly resided were se-rched and the paper was not found. I also in connection with Mr. Hamilton who was counsel for other of the defendants in this case requested the firm of Fisher and Company would make a search for said agreement, and we were unable to obtain it or find it in their possession. The paper in question is a paper sup-osed to be executed in 1882 or 1883 between, Elias Travers, James Travers, Elizabeth Travers, Mary Wynne and Sidney Verginia Mitchell in which it is supposed to have been agreed that the property of which Joseph Travers died siezed should be held equally between the parties to the said agreement.

Mr. BIRNEY. I object, the witness has never seen the paper or had

any information of its existence except from hearsay and it is improper to spread upon the record as a part of his testimony
216 the supposed contents in detail of the said supposed paper.

I move to strike out so much of Mr. Gordon's testimony as contain- the supposed contents of that paper.

Mr. STANLEY. I make the same objection and the same motion.

Mr. COLBERT testifies as follows: I desire to state in connection with Mr. Hamilton I represent probably all of the parties in interest here except the heirs of Elias Travers and the Institution represented by Mr. Gordon, and I personally went over all the papers in possession of Fisher and Company and of the heirs of Mrs. Wynne and Mrs. Mitchell and endeavored to find the agreement referred to by Mr. Gordon and was unable to do so. Mr. Gordon, Counsel for the Sisters of Visitation and for the heirs of Mrs. Wynne and Mrs. Mitchell now make demand on the Counsel for the heirs of Elias Travers to produce the agreement referred to in my testimony if they have the said agreement or a copy thereof.

Mr. GORDON. I offer in evidence a letter from Mr. Thomas J. Fisher to Sister Mary Agatha Travers dated the 26th of May, 1883.

Mr. BIRNEY. I object as not appearing to have anything whatever to do with the matter in litigation and as being incompetent and immaterial.

Mr. STANL-Y. I make the same objection.

The AUDITOR. The paper will be filed subject to the objections to be passed upon later.

Mr. GORDON. I now offer a letter from Thomas J. Fisher and Company to Sister Mary Agatha Travers dated 30th of May, 1883

Messrs. Birney and Stanley make objection on the ground previously stated.

217 The Auditor makes the same ruling.

Mr. GORDON. I now offer a letter from Mr. Elias Travers to Elizabeth Travers dated the 4th of June 1883.

Messrs Stanley and Birney make the same objection.

The Auditor makes the same ruling.

The signatures to the letters of Elias Travers *is* conceded by the counsel.

Mr. GORDON. I now offer a letter from Thomas J. Fisher to Sister Mary Agatha dated 9th of June 1883.

Messrs BIRNEY and STANLEY. We object as wholly immaterial to the matter under discussion and incompetent for any purpose

The Auditor makes the same ruling.

Mr. GORDON. I also offer a letter from Thomas J. Fisher to Sister Mary Agatha dated 12- of June 1883. I do not offer the memorandum as follows: "Advanced by Elias Travers and paid by him," at the bottom of said letter.

Mr. Birney and Mr. Stanley make same objection.

The Auditor makes the same ruling.

Mr. GORDON. I offer another letter from Elias Travers to Mrs. Mitchell dated 31st of October 1883

Messrs Birney and Stanley make the same objection.

The Auditor makes the same ruling.

Mr. GORDON. I offer a letter from Thomas J. Fisher to Mrs. Sidney Virginia Mitchell dated 29th of October 1883.

Messrs Birney and Stanley make the same objection.

The Auditor makes the same ruling.

Mr. GORDON. I offer a letter from Elizabeth Travers to Mrs. Wynne dated December 15, 1882.

Mr. BIRNEY and Mr. STANLEY. We object as incompetent for any purpose and as not identified in any way as a letter written by Miss. Elizabeth Travers.

218 It is admitted by counsel that the books of Fisher and Company if produced will show that on the 13th of February 1883 Fisher and Company advanced to William B. Webb, for Mrs. Wynne $500 and on the 13th of June 1883 advanced another $500 to Mr. Webb for Mrs. Wynne and furtherthat said amounts were returned to Fisher and Company from rents collected for Mrs. Wynne.

Counsel for the complainant and the heirs of Elias Travers while admitting that the books of Fisher and Company contain such entries object to them as incompetent and immaterial in this cause.

Mr. Gordon announced that their testimony upon their side is closed.

Adjourned to Friday, February 13, 1903 at 2 P. M.

219 TRAVERS ET UX. v. TRAVERS ET AL. } 21484 Eq

Before Auditor.

And now come A. A. Birney, Chas. H. Stanley, Fillmore Beall, and Edward A. Newman Solicitors for the heirs of Elias Travers and for the complainant Amelia C. Travers and for answer to the demand made on them as "follows towit "Counsel for "the Sisters of the Visitation and "for the heirs of Mrs. Winne and "Mrs. Mitchell now make "demand on the counsel for the "heirs of Elias Travers to "produce the agreement "referred to in my [Mr. "Gordon's] testimony if they "have the said agreement "or a copy thereof" say, as follows: That they never had said supposed agreement or copy thereof; that they never saw it or heard of it until the opposing counsel in this cause alleged its existence pending this controversy. And upon making full inquiry of their clients

220 respectively concerning said agreement or copy thereof they are assured by their said clients that they have no such paper or copy thereof; that they never had it; that they never saw

it and never heard of it until its existence was alleged by the opposing counsel pending this controversy and this statement applies to each of said clients

February 13, 1903.

EDWARD A. NEWMAN
C. H. STANLEY *Sol'r.*
FILLMORE BEALL
A. A. BIRNEY.

221 Friday February 13, 1903 at 2 P. M.

Hearing pursuant to adjournment.

Present Messrs Colbert, Gordon, Birney, Newman, Beall and Stanley.

Mr. Gordon withdraws his consent to the closing of his proof.

Counsel for the Sisters of Visitation and for the Mitchell and Wynne heirs ask that they be allowed at a future hearing to prove that the letter that was offered from Elizabeth Travers to Mrs. Wynne dated December 15, 1882 is in the hand-writing of Elizabeth Travers.

We also wish to offer in evidence the record which contains the bills and answers in two cases referred to in the answer in this cause in Equity Court filed by the same complainant as in this case being causes No's. 20,426 and 21,316

Mr. Birney and Mr. Stanley object as incompetent for any purpose in this cause.

Counsel for all parties now enter into a stipulation which is herewith filed the purpose of which is to identify the property mentioned in the will of Nicholas Travers, deceased according to the Subdivision and sale by the trustees appointed in this cause and the same is filed.

Mr. GORDON. I offer, by consent, a copy of the will of Elizabeth Travers dated the 30th of December 1894 and the other is an agreement entered into between counsel on the 7th of June 1900 in the matter of the estate of Elizabeth Travers pending in the Orphans Court.

222 Mr. BIRNEY. At the last session before the Auditor call was made upon counsel to produce a certain supposed paper writing of agreement. Counsel now respond to that call and submit their response in writing and the same is filed

Mr. COLBERT. On behalf of the client I represent I object to the statement contained in this supposed answer on the ground that it contains a statement made by the heirs of Elias Travers not under oath and because such statements are hearsay.

Mr. GORDON. The return should simply present the fact as requested and any return beyond that is not admissible as a return.

And now come A. A. Birney, Chas H. Stanley, Fillmore Beall and Edward A. Newman, Solicitors for the heirs of Elias Travers and for the complainant Amelia C. Travers and for answer to the demand made on them as follows:

Towit, "Counsel for the Sisters of the Visitation and for the heirs of Mrs. Wynne and Mrs. Mitchell now make demands on the counsel for the heirs of Elias Travers to produce the agreement referred to in my (Mr. Gordon's) testimony, if they have the said agreement or a copy thereof" Say, as follows: that they never had said supposed agreement or copy thereof, that they never saw it or heard of it until the opposing Counsel in this cause alleged it's existence pending this controversy. And upon making full inquiry of their clients respectively concerning said agreement or copy thereof they are assured by their said clients that they have no such paper or copy thereof; that they never had it—that they never saw it and never heard of until it's existence was alleged by the opposing counsel pending this controversy and this statement applied to each of said clients.

223 Thursday, April 2, 1903, 1:30 P. M.

Hearing Pursuant to notice.

Present Mr. Fillmore Beall, Mr W. A. Gordon, Mr. Birney Mr. Newman and Mr. Stanley.

The evidence taken at this hearing is subject to the objection and cross-examination by Messrs Hamilton and Colbert, solicitors for the parties, who are not present.

EDWARD A. NEWMAN being a witness was duly sworn and testified as follows:—

By Mr. BIRNEY.

Q. State for what parties you are counsel in this case? A. I represent the complainants and also the defendants who are the children of Elias Travers, deceased.

Q. There had been offered in evidence records in equity causes No. 20,426 and 21,316 Amelia C. Travers and husband vs. John H. Travers et al; state what part you had as counsel in the preparation of the bill in the first of those cases? A. I prepared the bill.

Q. Please state what knowledge, if any, you had of the will of Nicholas Travers, Sr., at the time you prepared this bill of complaint I have just called to your attention, and the circumstances under which you prepared that bill?

224 A. None. I prepared the bill so far as the description of the property was concerned from the tax bill submitted to me showing the assessments to be in the name of Joseph and James Travers and from a statement I think made by Thomas J. Fisher Company concerning the rents. With that light and some data that I got from the surveyor's office I prepared that bill so far as the description of the property is concerned and so far as the bill itself is concerned.

Q. Please answer distinctly what knowledge if any you had of the will of Nicholas Travers, Sr. A. I had no knowledge at that time of the existence of the will of Nicholas Travers, Sr.

Q. When did you first obtain any information touching the will of Nicholas Travers, Sr. A. Sometime between the second day of February and the 27th of March 1900 after the answer in the case had been filed and after the testimony had been taken. I became acquainted with the will during the progress of the suit pending regarding the settlement of the controversy then existing over the will of Elizabeth Travers, deceased.

Q. When you learned of the will of Nicholas Travers, Sr., and its contents what did you do? A. *A.* I informed my adverse counsel, representing the opposing side in reference to that fact that I made that discovery and explained to them that an error had crept into the bill without any knowledge on my part as to the existence of the will of Nicholas Travers, Sr. My recollection is that I suggested to them that Cause 20426 be permitted to proceed to final decree reserving the question as to the rights of the parties
225 to be adjusted by the distribution under the decree. But they did not acquie-ce in that suggestion and I went immediately to the Clerk's office and dismissed the bill on that date, the 27th of March 1900.

Q. What property was involved in that suit as compared with the property involved in the pending cause? A. The same property. I might add that after the original bill in 20426 was filed I discovered a piece of property that should have been put in. I put that in in an amended bill, but all the property in 20426 is embraced in 21,484, the present suit.

Q. Did you after that file a second suit? A. Yes, 21,316 equity.

Q. What property was involved in that suit? A. The property involved in that suit was all the property mentioned in 21,484 with the exception of that devise- to James Travers by the terms of Nicholas Travers' will. The bill (21,316) was filed April 5, 1900.

Q. The record in that cause now exhibited, shows that nothing was done beyond the filing of the answer by certain of the defendants. Was this due to any communication which you had with the counsel representing the adverse interests in this cause, if so please state what it was? A. Witness here produces a letter from Gordon and Gordon to Mes-rs E. A. Newman, Fillmore Beall and Charles H Standley, representing the heirs of Elias Travers, deceased, dated April 27, 1900, and says:

This letter was the cause of it.

226 Mr. Birney offers the letter in evidence.

Q. After receipt of this letter what was done? A. A conference was had betwe-n the gentlemen to whom this letter was addressed and as a result of that conference and a certain conference with counsel on the other side, 21,316 was dismissed and 21,484 was filed on the same day, which was the 8th of June 1900.

Q. What agreement if any was had among the counsel representing the two sides of the controversy as to the preparation of the pleadings

in the pending cause 21,484? A. Well, there was some discussion touching the form of the bill. Mr. Gordon and Mr. Hamilton prepared the bill it was in Mr. Gordon's handwriting and a draft was submitted to me by Mr. Gordon and was reduced to typewriting. The original draft was in Mr. Gordon's hand writing as I remember. Afterwards I think this copy was submitted to me and changes were made and they resulted in this bill 21,484.

Q. Was that bill filed drawn by agreement between you and Mr. Gordon and Mr. Hamilton and approved before it was filed? A. *A.* I do not know whether it was what you would call by agreement or not. It was made in compliance with the suggestion contained in this letter, I agreed to it, they submitted it to me so I presume they agreed to it.

Q. What was the agreement if any touching the forms of
227 the answers in the case? A. 21,484—whose answers?

Q. The answers of all the parties? A. I do not think there was any special agreement, the answers were submitted to me before they were filed.

Q. What answers? A. The answers of the Mitchell's, the Wynne's and I am not sure but the Sisters of the Visitation, about that I have no distinct recollection. my impression is that all the answers were submitted to me before they were filed.

By Mr. STANLEY.

Q. Did you have any consultation with Mr. Beall or myself in regard to the preparation of the bill or the filing of the bill and answers in 20426? A. No special special conference with Mr. Stanley, I did give Mr. Beall notice that I intended filing such a bill but concerning the specific allegations of the bill I do not know that I called their attention to it.

By Mr. GORDON.

Q. Mr. Newman the first bill you stated embraced all the property of the last, the bill in the present case? A. 20,426 embraced all the property that is in 21,484.

Q. Please state whether or not, the reasons for dismis-ing that bill was the fact that after it had been filed you became aware of the provisions of the will of Nicholas Travers, Sr. and thought that the bill improperly represented the interests of your clients,
228 was not that the reason for dismissing that bill? A. Yes, that was the reason I dismissed that bill, because there was an error in it concerning the interests of not only my clients, but of all the children of Elais Travers, deceased.

-. You then filed the second bill? A. Yes.

Q. That one embraced a part of the property embraced in the present bill? A. Yes.

Q. Was not that bill dismissed at the suggestion of the counsel of the other side after consultation with you, was not that dismissed in order that a new bill might be filed which would finally decide all the matters in controversy between the heirs of Nicholas Travers, Sr. A. Yes, that is true.

Q. Was not the third bill prepared by me after consultation with all the counsel in order that all matters in controversy might be decided in the present case. A. I understood that to be so, yes.

Q. Were not the facts embraced in that bill in regard to heirship and so on, as set forth in the last bill, based upon the facts in that connection as set forth in the prior bill? A. Yes, the same facts in 20,426 we used substantially the same allegations with the exception of the interests of the parties which I had specifically mentioned in 20,426 and I think the identical witnesses in 20,426 gave testimony in 21,484.

229 FIL-MORE BEALL being a witness was duly sworn and testified as follows:

By Mr. BIRNEY.

Q. There has been offered in evidence in this case the record in equity cause 20,426 in which it appears that you signed as counsel with Mr. Stanley answer of all the children of Elias Travers, except Charles. Please state who prepared that answer? A. That answer was prepared by Mr. Stanley and myself I think a large part of the work was done by me upon suggestion from Mr. Stanley received by mail and in consultation with him.

Please state what knowledge of the contents of the will of Nicholas Travers, Sr. you had at the time of the preparation of thatanswer, the second paragraph of which states the interests of your clients in that case? A. I had no information about the will of Nicholas Travers at that time, don't think I had ever seen it, and the first inspection I made of it, which I think was after the filing of this answer was on account of an examination, not for the purpose of ascertaining the interests of these people, but with a view of finding a description of the property.

Q. Can you tell when that was? A. It was in the early part of 1900.

Q. How far had this case progressed when you made that examination of the will of Nicholas Travers? A. I think this case was practically as far as it ever got. No, it was after the taking
230 of the testimony. Upon the taking of the testimony in this case and the dismissal of the bill upon consultation with Mr. Stanley and Mr. Newman we discovered what we considered to be the true interests of our clients.

Mr. BIRNEY. Pursuant to notice and offer heretofore made I now offer in evidence the following deeds:

Deed from Elias Travers and others to John Alexander dated January 5, 1857 recorded in liber J. A. S. 126, folio 334 of the land records of the District; a deed from John Alexander to Elias Travers and Joseph Travers, dated January 5, 1857 recorded in liber J. A. S. 126, folio 337.

Mr. GORDON. I object to the introduction of these papers as the property embraced in the deeds is not in controversy between the parties.

Mr. BIRNEY. A deed from Elias and Joseph Travers and James Travers to William Redin dated August 6, 1852, recorded in liber J. A. S. No. 48 folio 59; a deed from William Redin to Elias Travers, dated August 6, 1852 recorded in liber J.A.S. 48 folio 69; a deed from William Redin to Joseph Travers, dated August 6, 1852 recorded in liber J. A. S. 48 folio 65; a deed from William Redin to James Travers dated August 6, 1852, liber J. A. S. 48, folio 67; which are marked respectively deeds, 1, 2, 3, 4, 5, and 6.

Mr. GORDON. We object to these papers for the reason that none of the daughters of Nichols Travers, Sr., are parties to those deeds and the interests of those claiming from the said daughters can not be affected thereby. In addition the property mentioned in said deeds is not in controversy between the parties.

Adjourned subject to notice.

231 Wednesday, April 29, 1903.

Hearing pursuant to adjournment.

Present Mr. Birney, Beall, Gordan and Mr. Colbert.

Mr. CO-BERT having been duly sworn testified as follows:

For a good many years before the death of Sister Agatha, otherwise known as Elizabeth Travers I was her attorney. I made her last will and testament at her request, saw her sign her name to that paper, saw her write on a great many occasions and received a number of letters from her and am familiar with her hand writing. I can state of my own knowledge that the letter hereinbefore produced before the Auditor purporting to have been written by her but not signed is in her hand writing.

232 William B. Webb, Attorney at Law

WASHINGTON, *Nov 17 1882*

Mrs MITCHELL

Madam—I shall not be engaged particularly to-morrow (Saturday) and shall be glad, if convenient to see you with regard to your brothers affairs. Please call during the morning and oblige

Yours Very Respy

W. B. WEBB

233 William B. Webb, Attorney at Law

WASHINGTON, *Nov 23d 1882*

Mrs MITCHELL

Dear Madam—Since I saw you the other day, Mrs. Travers and Mr. Morgan the Administrator have been to see me, and I am anxious to see you and have a talk with you about her claims. She told me she had seen your brother Elias.

Yours Very Truly W. B. WEBB

234 William B.Webb, Attorney at Law

WASHINGTON, *Dec 5 1882*

Mrs MITCHELL

My Dear Madam—I am very glad to be able to inform you that your brother Elias, admits after considering the matter, that your brother Joseph's estate was his absolutely and, is to be shared by all of you his brothers and sisters equally. He has written to me to that effect and I am to prepare papers, so as to make a complete settlement. I wish you would come and see me at your earliest
235 convenience. Mr. Fisher wishes to see you and get a power from you to enable him to collect the rents, you had better call and see him either as you come to see me or on your way home—In haste

Yours Truly W. B. WEBB

236 William B. Webb, Attorney at Law

WASHINGTON, *Dec: 7' 1882.*

Sister MARY AGATHA TRAVERS—

I was called upon soon after the death of your brother Joseph, by Mrs. Mitchell for advice as to some matters relating to his estate. Almost simultaneously with Mrs. Mitchells call upon me I was sent for by your brother Elias and by him requested to take in charge the affairs of the heirs generally, and particularly to administer upon the estate of Joseph Travers both in this city and in St. Mary's County Maryland. The first question that presented itself for consideration was as to the rights of Joseph's widow and
237 this incidentally involved the question of the nature of Joseph's estate and of the disposition to be made thereof. He died as you are perhaps aware without having made a will. Upon examining your father's will I found strong reason to think that the property devised to your brother Joseph, was his absolutely and upon his death without a will descended subject to the widows right, to his brothers and sisters equally. I did not feel called upon to give any opinion upon the question however, because I did not think it was required of me, at the time. But the Balt and Potomac R. R. Co, the occupants of the property on the corner of 13th

St and Penna. av, called upon its counsel for his opinion as to whether a lease held by it under Joseph was good without
238 further renewal. Of course, if Joseph's estate was only for his life and upon his death belonged to James and Elias, a new lease would have to be made, but if the estate was his absolutely no new lease would have to be made. The Rail Road Company's counsel considered the question very carefully and gave a very full and conclusive opinion in writing, in which he holds that the estate of Joseph under his father's will was absolute, that there being no will that estate subject to the widows dower descends to all of the brothers and sisters alike and that the rents must be equally divided among you. This opinion was submitted
239 to your brother Elias who consents to it, and has in writing instructed me to prepare such a paper for the signature of all the parties in interest, that is all of Joseph's brothers and sisters to sign, as will put this conclusion in a shape to be acted upon. I enclose you a power of attorney authorizing Thomas J. Fisher a most reliable gentleman to collect the rents and divide them. I should have written to you before this, but Mrs. Mitchell told me you did not care to hear anything about the matter until I could communicate something definite and reliable. There seems to be no doubt that James will agree in this matter and this will make the arrangement complete.

Please sign the power before two witnesses.

Very sincerely yours,

W. B. WEBB

240 William B. Webb, Attorney at Law

WASHINGTON, *Dec 8' 1882*

Mrs. MARY WYNNE—

MADAM Soon after the death of your brother Joseph I was called upon by your sister Mrs. Mitchell and afterwards by your brother Elias to take charge of and manage the matters relating to his estate. Upon examining your father's will, it became manifest that under its provisions the property given to Joseph was his absolutely and not for life as had been heretofore supposed. I dont know whether you are acquainted with the provisions of your
241 fathers will, but in it there is an attempt to create two kinds of estates, by the simple use of words which have a fixed legal signification. The language of the will fails to affect the distinction, and so the estate of Joseph is what we lawyers call a fer. This view of the matter was submitted to your brother Elias, who is satisfied that it is right and has instructed me to prepare any paper that may be needed to carry it out. This I will do as soon as I determine how such paper should be framed. The effect of this will
242 be, that as Joseph died without making a will, his entire estate subject to the dower right of his widow will go to all of his brothers and sisters equally. The rents will be collected, one

third of them after paying expenses paid to Joseph's widow and the balance divided among all of you equally. The endowed power of attorney to Mr. Fisher is to enable him to collect the rents and make the division I have indicated. Please sign it in the presence of two witnesses and return it to me at your earliest convenience.

There seems to be no doubt that your brother James will
243 give his consent to the arrangement.

Please write to me fully, as to how I shall transmit any funds coming to you, and generally how you would have me act in your behalf, if you desire me to act for you.

Yours Very Respy.

W. B. WEBB

EXHIBIT No. 1.

Filed before the Auditor.

244 W. B. Webb, Attorney at Law 406 5th St., N. W.

WASHINGTON, D. C. *Dec 19: 1883.*

Mrs. S. V. MITCHELL

Dear Madam. Your favor of the 16 instant came duly to hand. I heard from Mr. Fisher to-day about your brother's will. He has obtained a copy of it and sent it to your brother Elias, and as soon as it *it* returned will send it to me. As soon as I get it, I will do what is right.

Yours Very Respy W. B. WEBB

245 William B. Webb, Attorney at Law

WASHINGTON, *Dec 23d, 1882*

Miss ELIZABETH TRAVERS

My dear Miss Travers. Your letter of the 15: inst came duly to hand with the enclosed power of atty—which is executed in due form. I have delayed answering until I could hear from Mr. Fisher as to your request concerning Mrs. Wynne. He says that as soon as he can get the power from Mr. Jos. Travers he will be enabled to make collections and will at once put in my hands the sum you ask say four hundred Dollars, as an advance to Mrs. Wynne.
246 As soon as he does I will either send it to you for remittance or will remit myself as you prefer. This must be done soon and you can safely write your sister to that effect.

I write this in some haste and am

Very Sincerely Yours W. B. WEBB

247 W. B. Webb, Attorney at Law 406 5th St., N. W.

WASHINGTON, D. C. *Feby 9, 1884.*

MRS MITCHELL

My Dear Madam. The will of your brother James was sent to me yesterday properly authenticated and I have had it properly recorded. I will notify Mr. Fisher and take such steps as will insure you your share of the benefits.

Yours sincerely W. B. WEBB

248 William B. Webb, Attorney at Law

WASHINGTON, *Feby 13, 1883.*

Miss ELIZABETH TRAVERS

My Dear Miss Travers Your favor of the 12.' inst came duly to hand with its enclosure, and by the same mail Mr. Fisher had sent to him similar papers from your brothers James and Elias. I have written to a lawyer at Leonardtown and will advise you when I have a reply. I think Mr. Morgan is premature in his proceeding. I have $500. for Mrs. Wynne which I will transmit to her in sterling funds by tomorrow's mail, in the care of Mr. Morgan as you suggest in your letter of Dec. 26th. You will find enclosed
249 Mr. Morgans letter which I return as you request.

I have a letter from Mrs Wynne under date of Jany, in which she asks for an advance, and tells me how she wishes it sent. You shall hear from me again as soon as I can advise you properly.

Yours Very Sincerely,

W. B. WEBB

Advanced by Elias Travers who appropriated all indebtedness.

250 William B. Webb, Attorney at Law

WASHINGTON, *Mar. 3d, 1883.*

Miss ELIZABETH TRAVERS.

Dear Miss Travers. I have had for some days Five Hundred Dollars advanced by Mr. Fisher on Mrs. Wynnes account, but did not know how to send it. Yesterday I heard from the Consul of Guatemala at New York, that the best method of transmitting money to Central American Countries was by Sterling draft. I have this day purchased a draft and by this mail will remit it to the care of the British Minister Resident. You told me some time ago
251 to let you know when I made any remittance to your sister, and I therefore now trouble you with this letter.

I saw your brother Elias at his house near Savage yesterday and had a long talk about matters relating to Joseph's estate. Things are going on slowly, but surely, I think. I will advise you if anything occurs.

Yours most sincerely W. B. WEBB

252 William B. Webb, Attorney at Law

WASHINGTON, *May 28, 1883.*

Sister MARY AGATHA TRAVERS.

Dear Miss Travers. I should have answered your letter long ago, but have been very much engaged, and for a day or two out of town on business relating to your brothers estate. Mr. Fisher told me this morning that he had heard from you and that he would to day send me a check for Five Hundred Dollars the amount your sister needs for her return expenses. As soon as I get it I will transmit it as I did the last, the receipt of which your sister acknowl-
253 edged under date of April 27 ult.

From what Mrs. Wynne says I suppose it will be best for her to arrive home during the summer months say in August or September. I hope the remittance I shall now make will enable her to return safe and in good season. I will write you further in a few days about other matters relating to the estate.

Most sincerely and truly yours

W. B. WEBB

254 William B. Webb, Attorney at Law

WASHINGTON, *Aug. 28, 1883.*

Sister MARY AGATHA TRAVERS.

My Dear Sister. I was in the city for a few hours last week and am in again to day, my family being out of the city near Brookville. Among my letters I find one from Mrs. Wynne acknowledging the money I sent her and informing me that she would sail from Guatemala on the 27' of July, I am not certain whether I wrote to you about this or not, and so I write again at this time. Excuse
255 me if I am communicating an old matter. I trust that before this Mrs. Wynne has returned in good health.

With kindest regards I am

Yours very sincerely W. B. WEBB

EXHIBIT No. 2.

Filed before the Auditor.

256 *Power of Attorney.*

Know all Men by these Presents, That We, Sidney V. Mitchell, Mary Wynnie, Elizabeth Travers, Mary E. Travers, John H. Travers, Joseph Travers, James W. Travers, Charles Elias Travers, Sidney Travers and Kate M. M. Owens only heirs of James Travers deceased, have made, constituted, and appointed, and by these presents, do make, constitute and appoint, the firm of Thomas J. Fisher & Co., Washington, D. C. my true and lawful attorneys, for me and in my name, place, and stead, hereby annulling and revoking all former

Powers of Attorney whatever in the premises To make proof of loss by fire on any of the property located within the District of Columbia belonging to the said James Travers deceased, and for us and in our name to attend to the adjustment of any loss, to receipt for any monies which are due or may become due to us (by reason of a loss by fire) by any Insurance Company or Companies having a policy or policies upon any of said property Giving and granting unto our said attorneys full power and authority to do and perform every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present at the doing thereof, with full power of substitution.

In testimony whereof, we have hereunto set our hands and seals this 15th day of May, eighteen hundred and eighty-eight.

SIDNEY V. MITCHELL [SEAL]
MARY WYNNE [SEAL]
ELIZABETH TRAVERS [SEAL]
Two witnesses who can write: MARY E. TRAVERS. [SEAL]
JOHN H. TRAVERS [SEAL]
JOS. TRAVERS. [SEAL]
JAMES W. TRAVERS. [SEAL]
C. ELIAS TRAVERS [SEAL]
S. TRAVERS. [SEAL]
KATIE M M OWENS [SEAL]

EXHIBIT No. 3.

Filed with the Auditor.

257 Liber 1168 Folio 342 et seq,—S. E. K. B—

ELIAS TRAVERS ET AL to FREEBORN G. SMITH } Recorded March 11— 1886 2–20 p. m., Lease

THIS INDENTURE, made this First day of January A. D. 1886 by and between Elias Travers of Howard County Maryland, and Elizabeth Travers, known in religion as Sister Mary Agatha, of Frederick Maryland, and Sidney V. Mitchell and Mary Wynne of Washington, D. C. the only heirs at law of the late James Travers, deceased, parties of the first part, and Freeborn G. Smith of Brooklyn, New York, of the second part. WITNESSETH, that for and in consideration of the rents hereinafter reserved to be paid and the covenants and agreements hereinafter agreed to be kept and performed by the party of the second part, and further in consideration of the sum of Five Dollars in lawful money of the United States to them in hand paid, the said parties of the first part have leased and demised and do hereby lease and demise unto the said

party of the second part all those certain pieces and parcels of land and premises situated and being in the City of Washington, District of Columbia, known as house No. 1225 Pennsylvania Avenue and 1216 "E" St, N. W. and designated upon the ground plat of said City as parts of Lots numbered Three (3) and Eight (8) in Square numbered Two hundred and ninety one (291) the exact lines, measurements, and courses whereof will fully and particularly appear from the plan or plat of said Lots here to attached; together with all the appurtenances thereunto belonging, for the full term of Fifteen (15) years, beginning on and from the First day of August, A. D. 1886; and the said party of the second part in consideration of this lease and demise to him doth hereby covenant and agree to pay unto the said parties of the first part, their executors or administrators and assigns as rent for the Land and premises so demised
258 the full sum of Eighteen hundred ($1800) Dollars, a year for each and every year of said term, which said rent is to be paid in monthly installments of One hundred and fifty $150.) Dollars each, respectively the first day of each month beginning with September, A. D. 1886; no rent to be charged from August the first 1886 to September the first 1886, the month's rent to be allowed for rebuilding. And the said party of the second part doth further covenant and agree with the said parties of the first part, that he, the said party of the second part, will within Nine (9) months after the first day of August A. D. 1886, take down and remove without cost or expense to the said parties of the first part, the buildings now on said land and premises, and will erect, construct and complete thereon within said Nine (9) months a good and substantial brick building suitable for business, or commercial purposes, and at a cost of not less than Ten thousand ($10.000) Dollars, Said party of the second part to have all the material in the old buildings now on said lots with out charge for same. And the said party of the second part doth further covenant and agree with the said parties of the first part, that he, the said party of the second part, will during the term of said lease, keep in good order and repair at his own cost and expense the building so to be constructed on said premises; and that at the end of said term, or sooner, in the event that this lease should for any cause be terminated before the end of said term, will surrender said land and premises, with the buildings thereon, in good order and condition, reasonable wear and tear and casualties by fire, the act of God and public enemies excepted, to the parties of the first part their heirs, representatives or assigns; and the said party of the second part does further covenant and agree with the parties of the first part, that
259 he the said party of the second part shall insure and keep insuring during the term of this lease the building hereinbefore provided to be constructed; and such insurance shall be for

the sum of at least Eight thousand ($8,000) Dollars, and the policy or policies therefore shall be procured from some good and responsible insurance company or companies, satisfactory to the parties of the first part, and shall be insured to Thos J. Fisher & Co. of Washington, D. C. as agents for the parties of the first part by whom in the event of loss on destruction of said buildings or of any injury thereto by fire, any money that may be collected by said Thos J. Fisher & Co. an account of such Insurance shall be applied to the restoration of said buildings, under the direction of the said party of the second part, and in the event of the said party of the second part should fail to insure or keep insured the buildings as hereinbefore provided, then the parties of the first part in addition to any other remedies provided in this instrument of writing, may procure such insurance in manner and in form as hereinbefore provided, and may therefore collect the premiums and costs of insurance from the party of the second part, who shall be liable therefore in the same manner as for rents hereinbefore specified to be paid, and the said parties of the first part do covenant and agree with the party of the second part that they will during the term hereby demised pay or cause to be paid punctually and promptly all taxes, assessments and public dues of every kind whatsoever (except water rents) that may be legally levied or assessed upon said land and buildings. Said parties of the first part for themselves, their heirs, personal representatives and assigns, covenant and agree with said party of the second part, that upon the expiration of the term herein and hereby created, the said premises shall not be leased to any person or persons other than the said party of the second part, unless nor until said party of the second part shall have declined to accept the same upon the same terms and conditions as are assented to by such other person or persons. And the said party of the second part further covenants and agrees that he will not assign or transfer this lease without the previous consent in writing of the parties of the first part, their executors, administrators or assigns and that no transfer of said lease shall have the effect to release the party of the second part, his representatives or assigns from liability on any of the cevenants herein contained. And the said party of the second part further covenants and agrees that the buildings herein provided to be constructed, and said land and premises shall not at any time be used for any purpose or business deemed dangerous, hazardous, immoral or detrimental to public health And it is further covenanted and agreed between the parties hereto that if the party of the second part his representatives or assigns, shall at any time fail to keep and perform any of the covenants and agreements herein agreed on his part to be kept and performed, then, and in that event, the parties of the first part, their representatives or their assigns or their agents or attorneys duly authorized may terminate this lease and declare the same at end, and may therefore enter

upon and take possession of the premises hereby demised and of the buildings to be constructed thereon, as provided herein, first giving notice in writing to the party of the second part, his representatives or assigns, or any tenant or occupant on the premises, or if there be no tenant or occupant, by pasting such notice of the premises, not less than Thirty days before making such entry or taking such possession; and upon such notice, if the same shall not in the meantime have been revoked, it shall
261 be duty of the party of the second part his heirs administrators or executors or assigns forthwith at or before the end of such Thirty days to vacate said premises and surrender the same peaceably to the parties of the first part, their heirs executors or administrators or assigns; and no other notice whatever shall be required from the parties of the first part their executors, administrators or assigns, and the party of the second part for himself, his executors, administrators or assigns, expressly waivers any and all other notice to which he or they may be entitled by law. But if within the Thirty days from and after the service, as aforesaid of such notice the party of the second part, his representatives or assigns, shall fully perform all the requirements of the covenants and agreements herein contained, and make good the failure in default and shall advise the parties of the first part of such performance and the notice aforesaid shall be regarded as revoked. And it is further covenanted and agreed that all the covenants and agreements herein contained shall inure to the benefit of the heirs, personal representatives, and assigns of the parties of the first part as well as to themselves, according as their interest may appear in the same manner and to the same effect as though they, each and all of them had been specifically named and designated in each one of said covenants and agreements and that said covenants and agreements shall be binding upon their heirs, executors administrators, personal representatives and assigns of the party of the second part in the same manner and to the same effect as though they and each and all of them had been specifically mentioned and designated in each of said covenants and agreements.

ELIZABETH TRAVERS [SEAL]
MARY WYNNE [SEAL]
F. G. SMITH [SEAL]
ELIAS TRAVERS [SEAL]
SIDNEY V. MITCHELL [SEAL]

262 STATE OF MARYLAND } *ss*
County of Howard }

I, Paul Kiefer a Justice of the Peace of 6 *ths* Election Dist, in and for the State and County aforesaid, Do Hereby Certify, that Elias Travers party to a certain Lease bearing date on the First day of J*n*auary A. D. 1886, and hereunto annexed, personally appeared before me in the State and County aforesaid, the said Elias Travers

being personally well known to me to be the person who executed the said Deed and acknowledged the same to be his act and deed. GIVEN under my hand and Official seal, this 22d day of January A. D. 1886.

[SEAL] PAUL KIEFER *J. P.*

STATE OF MARYLAND } *Sct:*
Howard County }

I, hereby certify that Paul Kiefer Esquire before whom the aforegoing acknowledgment was made and who has thereto subscribed his name, was at the time of so doing a Justice of the Peace of the State of Maryland, in and for Howard County duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments, I further certify that I am acquainted with the hand writing of the said Justice, and verily believe the signature to be his genuine signature. IN TESTIMONY WHEREOF I hereunto set my hand and affix the seal of the Circuit Court for Howard County, this 26th day of January A. D. 1886.

[COURT SEAL] L. J. WATKINS *Clerk.*

263 STATE OF NEW YORK } *88.*
County of Kings }

I, John M. Ranken, Clerk of the County of Kings, and Clerk of the Supreme Court of the State of New York, in and for said County (said Court being a Court of Record,) Do Hereby Certify, that John T. Finn whose name is subscribed to the certificate of Proof, or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public of the State of New York, in and for the said County of Kings dwelling in said County, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary and verily believe the signature to the said Certificate is genuine, and that said instrument is executed and acknowledged according to the laws of the State of New York. IN TESTIMONY WHEREOF, I Have hereunto set my hand and affixed the seal of said County and Court, this 3d day of Feby 1886

[COURT SEAL] JOHN M. RANKEN *Clerk.*

STATE OF NEW YORK } *88.*
County of Kings }

I, John T. Finn a Notary Public in and for the State and County aforesaid; Do Hereby Certify, that Freeborn G. Smith, Part- to certain Lease bearing date on the First day of January A. D. 1886, and hereunto annexed, personally appeared before me in the State and County aforesaid, the said Freeborn G. Smith being personally

well known to me to be the person who executed the said Deed, and acknowledged the same to be his act and deed. GIVEN under
264 my hand and Notarial seal, this Third day of February A. D. 1886.

[NOTARIAL SEAL] JOHN T. FINN
Notary Public Kings County New York.

DISTRICT OF COLUMBIA]

I, A. S. Taylor, a Notary Public in and for the District aforesaid, Do Hereby Certify, That Sidney V. Mitchell and Mary Wynne parties to a certain Lease bearing date on the first day of January A. D. 1886, and hereunto annexed, personally appeared before me in the District aforesaid the said Sidney V. Mitchell and Mary Wynne being personally well known to me to be the persons who executed the said Lease and acknowledged the same to be their act and deed. GIVEN under my hand and Notarial seal, this 6th day of February A. D. 1886.

[NOTARIAL SEAL] A. S. TAYLOR
Notary Public.

STATE OF MARYLAND } *ss:*
County of Frederick }

I, William Walsh, a Notary Public in and for the State and County aforesaid, Do Hereby Certify That Elizabeth Travers party to a certain Lease, bearing date on the First day of January A. D. 1886, and hereunto annexed, personally appeared before me, in the State and County aforesaid, the *sa* said Elizabeth Travers being personally well known to me to be the person who executed the said Lease and acknowledged the same to be her act and deed. Given under my hand and Notarial seal, this 11th day of
265 of February A. D. 1886.

[NOTARIAL SEAL] WILLIAM WALSH
Notary Public.

STATE OF MARYLAND } *Sct:*
Frederick County }

I, Hereby Certify That William Walsh (Notary Public) Esquire, before whom the annexed Acknowledgment was made, and who has thereto subscribed his name, was at the time of so doing, Notary Public of the State of Maryland, in and for Frederick County, duly appointed, commissioned and sworn, and authorized by law to take acknowledgments and administer oaths, and that the signature attached thereto, purporting to be his, I believe to be genuine. IN TESTIMONY WHEREOF, I have hereunto subscribed my name and

affixed the Seal of the Circuit Court for Frederick County, the eleventh day of february A. D. 1886.

[COURT SEAL] W. IRVING PARSONS
Clerk of the Circuit Court for Frederick County.

266 DISTRICT OF COLUMBIA. } January 15, 1903
Office of the Recorder of Deeds. }

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1168 fol. 342 et seq. one of the Land Records of the District of Columbia.

Seal: Recorder of Deeds. GEO. F. SCHAYER,
District of Columbia. *Dep. Recorder of Deeds.*

EXHIBIT No. 4.

Filed with the Auditor.

267 Heirs of Joseph Travers. In % with Thomas J. Fisher & Co.

Cr.

By Penn. R. R. Co. rent from 14th Sept. to 1 May	945.83
" Stinemetz rent from 14th Sept. to 1 May	753.33
" Delarue rent from 14th Sept. to 1 April..	544.48
" Roose rent from 14th Sept. to 1 May...	502.21
" Topham rent from 14th Sept. to 1 May	627.80
" Jacobs Bros rent from 14th Sept. to 1 May	627.80
" Vogt rent from 14th Sept. to 27 April...	619.42
" Breuninger (929 Pa av.) ½ rent from 14 Sept. to 9 April	258.
" Mantz rent from 14 Sept. to 1 April.....	223.60
" Wagner rent 7 Months to 15 April.....	105.
" Shooting Gallery in full to 23 Jan.....	95.
" 3d floor Cor 13th st and Pa. Av. 1 Mo. to 15 Mar	15.
" Geo. W. Adams (922 D st) ½ rent from Oct. to 1 May	47.96
	$5365.43

268 By amount forward to Cr..... $5365.43

Dr.

To 5 % Com. on 5365.43. rent Collected...	$268.27
" Insurance house N. E. Cor 13th st & Ave	12.
" Insurance 1233, 1235 & 1237 Penn Ave	12.

(Over.)

EXHIBIT No. 4 (Continued).

To Ward & Cunningham repairing roof No. 1235 Penn Ave	$5.	
" Collectors Certificate (4) (Jos Travers property)	2.	
" Chapman for New Arch 1229 Penn Ave by order of Dist Coms	7.	
Insurance house 1229. 6.– 1239 6.– & 927 4.– Penn Av	16.	
" Cook Col. Taxes first half 1883	873.91	
" Thorn rep. Sewer in Delarues yard	5.10	
" Taylor J. P. disposses-ing tenant in Shooting Gallery	5.50	
" Water rent Mantz store (see note below)	7.	
" Advertising Piney Point for rent in Post. Star & Baltimore Sun	15.75	
" Thorn. plumbing Cor 13th st & Ave	13.98	
" Expenses T. J. Fisher to Piney Point and two days board	7.	
" Cook Col. Taxes second half 1883	868.12	
" Ward & Cunningham repairing roof Cor 13th st and Ave	11.	
" Amount due to balance	3235.80	
	5365.43	5365.43

269 Cr

By Amount due Heirs to balance		$3235.80
Dr		
To Mary A Travers—one third Amt due Heirs		1078.60
Amount to be divided among 5 Heirs		2157.20
Dr		
To Cook Col. Taxes in Arrears	$1339.27	
" Expenses of T. J. Fisher and W. B. Webb. to Savage Station	3.20	
" Expenses of T. J. Fisher to Savage Station	2.70	
" Elias Travers one fifth	162.40	
" James Travers one fifth	162.40	
" Sidney V. Mitchell one fifth	162.41	
" Mary Wynne one fifth	162.41	
" Elizabeth Travers one fifth	162.41	
	2157.20	2157.20

Mantz not using water the rent had to be paid so the R. R. Co. could have water, they having paid their water rent.

Exhibit No. 5.

Certified Copy Will James Travers.

Filed with the Auditor.

270 Point Pleasant New Jersey
October 5th A D 1883

In the name of God Amen
I James Travers being of sound and disposing mind do declare this to be my last Will and Testament.

Item. My just debts and funeral expenses being first paid I hereby give divise and bequeath in manner following that is to say.

First. To my Brothers and Sisters all my interest and property however held in the City of Washington and District of Columbia.

Second. To my wife while she remains my widow all my property of every description and character not hereinbefore disposed of with full power of disposition and alienation provided however that in case our daughter survives her, that all the property not disposed of prior to my wifes decease shall be and become the property of our said daughter, and in the event of my wifes contracting another marriage, then it is my will that she shall possess and enjoy as of her own right, only one third of the property then remaining, and that the other two thirds shall be invested and held in trust for my daughter Annie and paid to her upon attaining her
271 majority. And furthermore should my daughter die without leaving a child or children it is my will, that any property which she may be entitled to or enjoy under this will shall go to my two Sisters Mrs. Sydney *Wy*inia Mitchell and Mrs. Mary Wynne their heirs and assigns, share and share alike.

I hereby appoint my wife sole Executrix of this my last will and testament

JAMES TRAVERS [L. S.]

Signed, Sealed and delivered in the presence of
EDWARD H. MURPHY
MARY J. MILEY
PETER BACKES

State of New Jersey } ss.
Ocean County }

Peter Backes one of the witness- of the within Will, being duly sworn according to law, did depose and say that he saw James Travers the testator therein named, sign and seal the same, and heard him publish, pronounce and declare the annexed writing to

be his last Will and testament, and that at the doing thereof, the said testator was of sound and disposing mind and memory
272 as far as this deponant knows and as he verily believes and that Edward H. Murphy and Mary J. Miley the other subscribing evidences present at the same time and signed their name- as witness- to the said Will, together with this deponant in the presence of the said testator and each other.

PETER BACKES

Sworn and subscribed before me, this 5th day of November A. D. 1883.

CHAS. W. POTTER
Surrogate

STATE OF NEW JERSEY } ss.
Ocean County }

Sophia Virginia Travers the Executor in the within testament named, being duly sworn according to law did depose and say that the annexed instrument contains the true Last Will and Testament of James Travers the testator therein named, as far as she Knows and as she verily believes; that she will well and truly perform the same, by paying first the debts of said deceased, and then the legacies in said Will specified and render a just and true account, when thereunto, lawfully required; and further, that the said James
273 Travers died on the First day of November A. D. 1883.

SOPHIA V. TRAVERS

Sworn and subscribed before me, this 15th day of November A. D. 1883.

CHAS. W. POTTER
Surrogate

STATE OF NEW JERSEY } ss.
County of Ocean }

I, Charles W. Potter Surrogate of the County of Ocean do certify the annexed to be a true copy of the last Will and Testament of James Travers, late of the County of Ocean deceased, and that Sophia Virginia Travers of the County of Ocean, the Executrix therein named proved the same before me, and she is duly authorized to take upon herself the administration of the Estate of the Testator agreeably to the said will.

Witness my hand and seal of Office this 15th day of
[SEAL] November in the year of our Lord one thousand eight hundred and Eighty three 1883.

CHARLES W. POTTER
Surrogate

274 STATE OF NEW JERSEY } ss.

I, Bennet Van Syckel one of the judges of the Supreme Court a court of record of said State do hereby certify that Charles W. Potter before whom the foregoing proof was taken was at the

time thereof Surrogate of the Orphans Court in and for the County of Ocean in said State duly commissioned and sworn and to all whose official acts as such full faith and credence is given and that he is the proper person before whom the foregoing will to which this is annexed should be proven and that his signature to the foregoing certificate of proof is genuine and that the annexed will is executed acknowledged and proven according to the laws of the said State of New Jersey

In Witness Whereof I have hereunto set my hand this second day of February A. D. 1884.

B. VAN SYCKLE
Jus. Sup. Ct. of New Jersey

STATE OF NEW JERSEY } ss.
County of Ocean }

275 I, William I. James clerk of the said County do hereby certify that Bennet Van Syckle the person subscribing the foregoing certificate of official character and power of the Surrogate of the said County and before whom the acknowledgement was taken on the Second day of February A. D. 1884 therein mentioned is a Judge of the Supreme Court of the State of New Jersey a Court of record of said State and that I am well acquainted with the handwriting of the said Bennet Van Syckle and verily believe that his name subscribed to the said certificate is his proper and genuine signature.

In Testimony Whereof I have hereunto affixed the seal [SEAL] of this office at Toms River the fifth day of February in the year one thousand eight hundred and eighty four.

WM. I. JAMES
Clerk

276 Supreme Court of the District of Columbia,

Office of the Register of Wills.

DISTRICT OF COLUMBIA, *to wit:*

I hereby Certify That the aforegoing is a true copy from the Exemplified Copy of the Last Will & Testament of James Travers, deceased from the Orphan's Court of Ocean Co. New Jersey filed and recorded in the Office of the Register of Wills for the District of Columbia.

Seal Supreme Court of the District of Columbia. Probate Jurisdiction.

Witness my hand and the seal of the Supreme Court of the District of Columbia, special term for Orphans' Court business, this 29th day of February A. D. 1884.

H. J. RAMSDELL
Register of Wills, D. C.

Exhibit No. 6.

Lease.

Filed with the Auditor.

277 This Indenture, made this first day of July A. D. 1883 Between Thomas J. Fisher & Co., (as Agents for the heirs of Joseph Travers, deceased) of the District of Columbia of the first part and "The Pennsylvania Rail Road Company" a Corporation duly incorporated under the laws of the State of Pennsylvania of the second part.

Witnesseth that the said parties of the first part for and in consideration of the rent hereinafter reserved to be paid by the said party of the second part have demised and leased and by these presents do demise and lease unto the said party of the second part its successors and assigns the premises known as the second and third floors (except that portion thereof occupied by Hantz & Co., in connection with their store No. 413 Thirteenth Street northwest) of number Twelve hundred and thirty-nine (1239) Pennsylvania Avenue at corner of Thirteenth (13th) Street west in the City of Washington for the full end and term of Nine (9) years and One (1) month, fully to be complete and ended, beginning for the same with the first day of July in the year Eighteen hundred and Eighty three (1883) and ending on the First day of August in the year Eighteen hundred and ninety-two (1892) at and for the annual rent of Four hundred (400) Dollars payable in equal quarterly installments after the first payment which shall be made on the last day of October A. D. 1883 which payment shall be for four months ending with that date.

278 The said party of the second part doth hereby agree to pay said rent reserved in the manner and form and at the time and times, and in the installments hereinbefore stipulated; to pay for all gas and water by it used on said premises during the continuance of this lease, and that if said rent is not paid within five days after the same shall be and become due, to surrender said demised premises to said parties of the first part their executors, administrators or assigns; and said party of the second part further agrees not to assign this lease or sub let the demised premises without first having obtained the written consent of said parties of the first part.

The said parties of the first part for themselves, their heirs, executors and administrators do hereby covenant, promise and agree to and with said party of the second part, its successors and assigns, that if said demised premises are by by Fire, act of God or public enemies rendered at any time untenantable, that the rent hereinbefore reserved shall not be paid or accrue until the premises leased are

restored to a tenantable condition, that the said party of the second part shall keep said premises in ordinary repair, but shall not be liable to rebuild or re-construct said premises if the same are injured by fire, act of God or public enemies.

That the said party of the second part is further hereby authorized to alter and change said demised premises to suit the demands and convenience of its business, as may appear to it desirable but at its own expense.

In Testimony Whereof the said parties of the first part
279 have hereunto set their hands and seals, and the said party of the second part, hath caused its common or corporate seal to be affixed, the day and year first herein written to this and duplicate of like tenor and date.

T. FISHER CLARK THOS. J. FISHER & CO
Agents for Heirs of Joseph Travers deceased
THE PENNSYLVANIA RAILROAD COMPANY,
JOHN M. HARDING By G. B. ROBERTS *President.*
Seal of Pennsylvania Railroad Co., incorporated 1846.
Attest: JNO. C. SMITH JR. *Secretary.*

EXHIBIT No. 7.

Filed with the Auditor.

280 POINT PLEASANT NEW JERSEY
October 5th A D 1883.

In the name of God Amen

I James Travers being of sound and disposeing mind do declare this to be my last Will and Testament

Item. My just debts and funeral expenses being first paid I hereby give devise and bequeath in manner following that is to say

First To my Brothers and Sisters all my interest and property however held in the City of Washington and District of Columbia

Second To my wife while she remains my widow all my property of every description and character not hereinbefore disposed of with full power of disposition and alienation, provided however that in case our daughter survives her, that all the property not disposed of prior to my wife's deceased shall be and become the property of our said daughter, and in the event of my wife's contracting another marriage, then it is my will that she shall possess and enjoy as of her own right, only one third of the property then remaining, and that the other two thirds shall be invested and held in trust for my daughter Annie and paid to her upon attaining her majority, and furthermore should my daughter die without leaving a child or children it is my will, that any property which she may

be entitled to or enjoy under this will shall go to my two Sisters Mrs Sydney *Wy*inia Mitchell and Mrs Mary Wynne their heirs and assigns, share and share alike

I hereby appoint my wife Sole Executrix of this my last will and Testament JAMES TRAVERS (LS)

281 Signed Sealed and delivered in the presence of
EDWARD H. MURPHY
MARY J. MILEY
PETER BACKES

282 STATE OF NEW JERSEY, *Ocean County,* } *ss:*

Peter Backes one of the witness... of the within Will, being duly Sworn according to law, did depose and say that he saw James Travers the testator therein named, sign and seal the same, and heard him publish, pronounce and declare the annexed writing to be his Last Will and Testament, and that at the doing thereof, the said testator was of sound and disposing mind and memory as far as this deponent knows and as he verily believes and that Edward H. Murphy and Mary J. Miley the other subscribing evidences present at the same time, and signed their name... as witness... to the said Will, together with this deponent in the presence of the said testator and each other.

PETER BACKES

Sworn and subscribed before me, this 15th day of November A. D. 1883

CHAS W POTTER
Surrogate

STATE OF NEW JERSEY, *Ocean County,* } *ss:*

Sophia Virginia Travers the Executor... in the within testament named, being duly Sworn according to law, did depose and say that the annexed instrument contains the true Last Will and Testament of James Travers the testator therein named, as far as she knows and as she verily believes; that she will well and
283 truly perform the same, by paying first the debts of said deceased, and then the legacies in said Will specified, and render a just and true account, when thereunto lawfully required; and further, that the said James Travers died on the First day of November A. D. 1883.

SOPHIA V. TRAVERS.

Sworn and subscribed before me, this 15th day of November A. D. 1883

CHAS. W. POTTER
Surrogate.

284 STATE OF NEW JERSEY } ss
County of Ocean }

I Charles W. Potter Surrogate of the County of Ocean do certify the annexed to be a True Copy of the last Will and Testament of James Travers, late of the County of Ocean deceased, and that Sophia Virginia Travers of the County of Ocean, the Executrix therein named, proved the same before me, and she is duly authorized to take upon herself the Administration of the Estate of the Testator agreeably to the said Will.

Witness my hand and Seal of Office this 15th day of November in the year of our Lord one thousand eight hundred and Eighty-three 1883.

[NOTARIAL SEAL] CHARLES W. POTTER
Surrogate

285 STATE OF NEW JERSEY } ss

I Bennet Van Syckel one of the Judges of the Supreme Court a Court of record of said State do hereby certify that Charles W Potter before whom the foregoing proof was taken was at the time thereof Surrogate of the Orphans Court in and for the County of Ocean in said State duly commissioned and sworn and to all whose official acts as such full faith and credence is given and that he is the proper person before whom the foregoing will to which this is annexed should be proven and that his signature to the foregoing certificate of proof is genuine and that the annexed will is executed acknowledged and proven according to the laws of the said State of New Jersey.

In Witness Whereof I have hereunto set my hand this second day of February A D 1884

B. VAN SYCKEL
Jus Sup Ct of New Jersey.

286 STATE OF NEW JERSEY } ss:
County of Ocean }

I William I James clerk of the said County do hereby certify that Bennet Van Syckel the person subscribing the foregoing certificate of official character and power of the Surrogate of the said County and before whom the acknowledgment was taken on the Second day of February A D 1884 therein mentioned is a Judge of the Supreme Court of the State of New Jersey a Court of record of said State and that I am well acquainted with the handwriting of the said Bennet Van Syckel and verily believe that his name

subscribed to the said certificate is his proper and genuine signature.

In Testimony Whereof I have hereunto affixed the seal of this office at Toms River the fifth day of February in the year One thousand eight hundred and eighty four

[NOTARIAL SEAL] WM I. JAMES *Clerk*

287 Supreme Court of the District of Columbia,
Holding a Probate Court.

DISTRICT OF COLUMBIA, *to wit:*

I, Louis A. Dent, Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby Certify, that the foregoing is a true copy of the Certified copy of the last will and testament of James Travers, deceased, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, in the matter of the estate of James Travers, deceased.

Seal Supreme Court of the District of Columbia. Probate Jurisdiction.

I further certify, That I have compared said copy with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 2nd day of July, A. D. 1903.

LOUIS A DENT
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

288 Supreme Court of the District of Columbia.
Holding a Probate Court.

DISTRICT OF COLUMBIA, *to wit:*

I Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, do hereby certify that Louis A. Dent, Esquire, who executed the foregoing attestations, is the Register of Wills in and for said District, duly commissioned and qualified, and Clerk of the said Probate Court; and the said attestations are in due form of law by the proper officer.

In testimony Whereof, I hereunto set my hand and seal, this second day of July Anno Domini 1903

HARRY M. CLABAUGH [SEAL.]

EXHIBIT No. 8.

Filed with the Auditor.

289 Liber J. A. S. 126. Folio 334.

ELIAS TRAVERS & OTHERS
To
JOHN ALEXANDER
} Deed Recorded 13th Jany, 1857.

THIS INDENTURE Made this fifth day of January in the year one thousand eight hundred and fifty seven Between Elias Travers of the first part Joseph Travers of the second part, James Travers of the third part, and John Alexander of the fourth part. all of Washington County, in the District of Columbia; Whereas Nicholas Travers, late of Washington City deceased in his will bearing date the tenth day of July Eighteen hundred and forty, duly executed and attested, among divers other divises & bequeaths, gave and devised to his heirs under certain limitations and provisions for seven years after his death the following lot or parcel of ground with the improvements and appurtenances (subject to the conditions of a certain Lease to Franklin Gardiner dated the ninth of Feby 1846 & rec in Liber W. B. No 125 folio 20 30 Being Lot numbered five in square numbered three hundred and seventy nine. whereby under the provisions of said will as set forth in a co-dicil thereunto bearing date the twenty seventh day of August eighteen hundred and forty six, reference to which is made, the said property so devised came to and vested in the surviving sons, Elias, Joseph and James Travers in equal but undivided shares, in fee simple, and

290 Whereas the said parties hereto of the first, second and third parts desire to make partition thereof and they have agreed that the said Lot numbered five (5) in square numbered three hundred and seventy nine (379) in the City of Washington as designated on the official plat thereof, shall be taken and held by said Elias and Joseph Travers in equal undivided portions as tenants in common and not as joint tenants, and the said Elias and Joseph Travers for equality of partition have paid to said James Travers the sum of six thousand Dollars which he doth hereby acknowledge. And in order the more correctly and perfectly to carry out said partition, they have all proposed to make and execute these presents, This Indenture therefore Witnesseth: that in consideration of the premises they the said parties hereto of the first second and third parts have and each and every of them hath granted, bargained, sold, aliened released and confirmed and by these presents do and each and every of them doth grant, bargain sell, alien, release

291 and confirm unto the said party hereto of the fourth part, & his heirs, all that piece or parcel of ground designated on the official plat of the City of Washington, as Lot numbered five

(5) in square numbered Three hundred and seventy nine (379) fronting on Pennsylvania Ave. and north D. street. Nevertheless in Trust to convey said lot numbered five in said square unto Elias & Joseph Travers, their heirs and assigns, as tenants in common and not as joint tenants to them and their only use, benefit and beho-of forever.

292

ELIAS TRAVERS [SEAL]
JOSEPH TRAVERS [SEAL]
JAMES TRAVERS [SEAL]

Signed sealed and delivered in the presence of
F. S. MYER
O. E. P. HAZARD

F. S. MYER, *J. P.* [SEAL.]
O. E. P. HAZARD *J P.* [SEAL]

293 Liber J. A. S 126 Folio 337

JOHN ALEXANDER To ELIAS & JOSEPH TRAVERS } Deed Recorded 13th Jany 1857.

THIS INDENTURE Made this fifth day of January in the year Eighteen hundred and fifty seven Between John Alexander of the first part and Elias & Joseph Travers of the second part all of Washington County, District of Columbia. WHEREAS Elias Travers, Joseph Travers & James Travers became entitled under the provisions of the will of their late father Nicholas Travers, to Lot numbered five in square numbered three hundred and seventy nine. AND WHEREAS the said Elias, Joseph & James Travers having agreed upon a partition and division of the same. THIS INDENTURE THEREFORE WITNESSETH that in consideration of the premises, he the said party of the first part, hath given, granted bargained, sold, enfeoffed, conveyed, released, surrendered and confirmed and by these presents doth give, grant, bargain, sell, enfeoff, convey, release, surrender and confirm unto the said party hereto of the sec-

294 ond part and their heirs and assigns forever, all that piece or parcel of ground situate in the City of Washington & designated on the official plat of said City as lot numbered five (5) in square numbered Three hundred and seventy nine (379). and all right title, interest and estate of the said party of the first therein and thereto, subject however to certain conditions of a Lease to Franklin Gardiner To HAVE AND TO HOLD the said lot numbered five (5) above described and intended to be conveyed and every part

thereof with the appurtenances unto and to the use of the said party hereto of the second part, their heirs and assigns forever, to be held by them as tenants in common and not as joint ten-
295 ants.

JOHN ALEXANDER [SEAL]

Signed sealed and delivered in the presence of
F. S. MYER
O. E. P. HAZARD

296 Liber J A S No 48 Folio 59

ELIAS, JOSH & JAS TRAVERS } Deed
To } Recd 18th November, 1852.
WILLIAM REDIN

THIS INDENTURE made the sixth day of August in the year one thousand eight hundred and fifty two between Elias Travers of the first part Joseph Travers of the second part, James Travers of the third and William Redin of the fourth part, all of Washington County in the District of Columbia, WHEREAS Nicholas Travers late of the City of Washington deceased by his will bearing date the tenth day of July eighteen hundred and forty executed and attested among divers other divers and bequests, gave and devised unto his son Nicholas and his heirs forever the following lot or parcel of ground with the improvements and appurtenances composed of Parts of lots numbered five and four in square numbered Two hundred and ninety one in the said City of Washington, lot to
297 the point of beginning on the avenue and also that piece or parcel of ground composed of twenty five feet front and rear being the West part of lot numbered eight in said square and which devises were to be subject to the general provision in said will after contained. And Whereas the said Testator had the other sons namely: the said Elias, Joseph and James parties hereto, to each of whom he gave other specific portions of his real estate And in and by his said will he declared as a general provision applicable to each and every of them, that if any of his said sons should DE without leaving a will or a child or children leavin- at his death then his estate therein devised to him should go and be invised in fee to his surviving sons and the child or children of such as might be dead, such or children, representing the share of the father but if either of his said sons, should at his death leave a will, either with or without a child or children, such wife should be
298 entitled to her dower, as in and by the said will may more at large appear. And whereas the said Nicholas Travers after making his said will erected a brick house west of his own residence on Pennsylvania Avenue which covered part of the ground so devised to his son Nicholas fronting on said Avenue reducing the same from fifty feet front as expressed in his said will to forty

five feet and ten inches and by a codicil to his said will dated the twenty seventh day of August Eighteen hundred and forty six, he revoked the devise to his said son Nicholas of so much of the said parcel of ground as was covered by the said house and of the same width to the rear of said lot. And Whereas the said Nicholas Travers afterwards departed this life without altering or revoking his said will in any other respect as to the devises therein contained to his said son Nicholas leaving him and his said other sons, parties hereto surviving him the said Testator. And Whereas the said Nicholas the son after the death of his said father departed this life intestate without having been married and without leaving any child or children, Whereby under the provisions of the said will the said property so devised to him came to and
299 vested in his said three brothers in equal but undivided shares. And whereas the said parties hereto of the first, second and third parts desire to make partitions thereof And in order the more correctly and perfectly to carry out such partition they have all proposed to make and execute these presents. This Indenture therefore witnesseth that in consideration of the premises and of the sum of one dollar current money of the United States to the said parties hereto of the first, second and third parts in hand paid to each of them by the said party hereto of the
300 fourth at or before the execution of these presents the receipt whereof are hereby acknowledged, They the said parties hereto of the first, second and third parts have and each and every of them hath granted, bargained sold, aliened released and confirmed and by these presents do and each and every of them doth grant, bargain, sell, alien release and confirm unto the said party hereto of the fourth part and his heirs. All those portions of lots number five and four in square number Two hundred and ninety one in the said City of Washington which front on the north side of Pennsylvania Avenue and begin at [Description follows].

301 And also all that part of lot number eight in said square fronting on E. street north beginning [Description follows].

302 To have and to hold the said several pieces or parcels of ground above mentioned and described and every of them and every part thereof with the appurtenances unto and the use of the said party hereto of the fourth part, his heirs and assigns. Nevertheless in trust to convey said part of said lot number eight fronting on E. street north in said square unto the said Elias Travers, his heirs and assigns in severally and said parts of said Lots numbered four and five fronting on Pennsylvania Avenue to the said Joseph Travers and James Travers to each one moiety to the former the wester-most moiety and his heirs in severally and to the latter the easter-most moiety and his heirs also in severally. And the said parties hereto of the first second and third parts do

hereby covenant with the said party hereto of the fourth part that they will at any and all times hereafter at the request and
303 of the party hereto of the fourth part as and execute any further and the better to convey the said premises unto him as aforesaid. In Witness whereof the said parties hereto of the first, second and third parts have hereunto set their hand- and seals the day and year first above written.

ELIAS TRAVERS [SEAL]
JOSEPH TRAVERS [SEAL]
JAMES TRAVERS [SEAL]

Signed sealed and delivered in presence of
HENRY REAVER
A. K. ARNOLD

304 Liber J. A. S No. 48 Folio 69

WILLIAM REDIN To ELIAS TRAVERS } Deed Recorded 18th Nov 1852.

THIS INDENTURE Made this sixth day of August in the year one thousand eight hundred and fifty two, between William Redin of the first part and Elias Travers of the second part both of Washington County in the District of Columbia. WHEREAS the said Elias Travers and Joseph and James Travers as the surviving Brothers of Nicholas Travers deceased became entitled under the provisions of the will of theirlate Father Nicholas Travers to the portion of lots numbered four and five and of lot numbered eight in square numbered Two hundred and ninety one in the City of Washington, which were devised to their said late Brother by the said will. AND WHEREAS, the said Elias, Joseph and James Travers having agreed upon a partition and division of the same to be held in severalty they united in a mutual deed of said parts of lots to the said party hereto of the first part, for the purpose of carrying out such partition and division and the part of lot number eight in said square, hereinafter described having been allotted to the said Elias Travers, these presents are made in order to vest the same in him and his heirs in severalty This Indenture
305 Therefore witnesseth that in consideration of the premises and of the sum of one dollar current money of the United States to the said party hereto of the first part in hand paid by the said party hereto of the second part, at or before the execution of these presents, the receipt whereof is hereby acknowledged, he the said party hereto of the first part hath granted, bargained, sold, aliened, released and confirmed and by these presents doth grant, bargain, sell, alien, release and confirm unto the said party hereto of the

second part, his heirs and assigns. All that part of lot numbered
eight in square numbered Two hundred and ninety-one
306 fronting on E. street north, beginning [Description follows].
To have and to hold the said part of said lot numbered eight above described and intended to be here by conveyed and every part thereof with the appurtenances unto and to the use of the said party hereto of the second part, his heirs and assigns forever to be held by him and them in severalty. IN WITNESS WHEREOF the said party hereto of the first part hath hereunto set his hand and seal the day and year first above written

W. REDIN [SEAL]

Signed sealed & Delivered in the presence of
A. R. ARNOLD
HENRY REAVER

307 Liber J. A. S No 48 Folio 65

WILLIAM REDIN
To
JOSEPH TRAVERS
} Deed recd 18th Nov 1852

THIS INDENTURE Made the sixth day of August in the year one thousand eight hundred and fifty two Between William Redin of the first part and Joseph Travers of the second part both of Washington county in the District of Columbia, WHEREAS, the said Joseph Travers and Elias and James Travers as the surviving Brother- of Nicholas Travers deceased became entitled under the provisions of the will of their late father Nicholas Travers to the portions of lots number four and five and of Lot number eight in square number Two hundred and ninety one in the City of Washington which were devised to their said late brother by the said will. And whereas the said Joseph Elias and James Travers having agreed upon a partition and devision of the same to be held in severalty, they united in a mutual deed of said parts of Lots to the said party hereto of the first part for the purpose of carrying out such partitions and divisions and the part of lots number five and four in said square hereinafter described having been allot-ed to the said Joseph Travers these presents are made in order to vest the
same in him and his heirs in severalty. This Indenture there-
308 fore Witnesseth, that He the said party hereto of the first part, hath granted, bargained, sold, aliened, released and confirmed and by these presents doth grant, bargain sell, alien release and confirm unto the said party hereto of the second part

his heirs and assigns. All that part of the said portions of lots number five and four in said square number Two hundred and
309 ninety one in the said City of Washington [Description follows]. To have and to hold the said part of said lots number four and five above described and intended to be hereby conveyed and every part thereof with the appurtenances unto and to the use of the said party hereto of the second part his heirs and assigns forever to be held by them and them in severalty.

310 W. REDIN [SEAL]

Signed sealed and delivered in the presence of
A R. ARNOLD
HENRY REAVER

311 Liber J. A. S No 48 Folio 67.

WM REDIN } Deed
To
JAMES TRAVERS } Recorded 18th Nov 1852.

THIS INDENTURE Made this sixth day of August in the year one thousand eight hundred and fifty two Between William Redin of the first part and James Travers of the second part, both of Washington County in the District of Columbia, WHEREAS the said James Travers and Elias and Joseph Travers as the surviving Brother- of Nicholas Travers deceased became entitled under the provisions of the will of their late Father Nicholas Travers to the portions of lots number four and five and of lot number Eight in square number Two hundred and ninety one in the City of Washington which were devised to their said late brother by the said will. AND WHEREAS the said James Elias and Joseph Travers having agreed upon a partition and devision of the same to be held in severalty, they united in a mutual deed of said parts of lots to the said party hereto of the first part for the purpose of carrying out such partition and division and the part of lot number four in said square hereinafter described, having been allotted to the said James Travers, these presents are made in order to vest the same
312 in him and his heirs in severalty. THIS INDENTURE THEREFORE WITNESSETH that in consideration of the premises he the said party hereto of the first part, hath granted, bargained sold, aliened released and confirmed and by these presents doth grant, bargain, sell alien release and confirm unto the said party hereto of the second part, his heirs and assigns. All that part of lot number Four in said square number two hundred and ninety
313 one in said City of Washington which begins [Description follows]. To have and to hold the said part of the said lot numbered four above described and intended to be hereby conveyed and every part thereof, with the appurtenances unto and

to the use of the said party hereto of the second part, his
314 heirs and assigns foreve to be held by him and them in severalty IN WITNES WHEREOF the said party hereto of the first part hath hereunto set his hand and seal on the day and year first above written.

W. REDIN [SEAL]

Signed sealed & delivered in the presence of
A. K ARNOLD
HENRY REAVER

EXHIBIT No. 9.

Filed with the Auditor.

315 Jacobs Brothers, Diamonds, Watches and Jewelry,
1229 Penna. Avenue.

WASHINGTON, D. C., *March 27th 18-6*

We, the undersigned tenants at 1229 Pennsylvania Avenue N. W. in consideration of renewal of lease of said premises for a period of ten years at same rent as now paid by us, to take effect from and after the 1st day of May 1886 for the term of Ten years next ensuing, waiving and relinquishing all right and claim in the remainder of the present lease; hereby agree to make the following alterations and improvements to said premises at our expense, also to keep same in repair (at our expense) during our occupancy of this property.

1st. Insuring property against loss by fire for the sum of Five Thousand Dollars ($5000.)

2nd Lowering of floor to level of street

3rd Taking out partition wall of passage, so as to widen the store.

4th Entire new front of French plate glass, with elegant mansard show windows, and entire new entrance to upper portion of house of French plate glass.

5th Putting fancy iron cornices over each window of entire front.

6th Painting entire front, up to roof.

7th Repainting and papering interior of store.

316 The improvements and alterations already enumerated to be commenced a reasonable time after said 1st day of May 1886, the whole to be done in a substantial and workmanlike manner, to remain at the end of the said term the property of the heirs of Joseph Travers (deceased) and clear of all cost and expense to them. We

also, as said lessees, shall be answerable for all damages done to the walls or otherwise of adjoining property.

Yours Respectfully JACOBS BROS

To The Heirs of Joseph Travers Esq.

Approved Apr 10 '86
ELIAS TRAVERS
M WYNNE
SIDNEY V. MITCHELL

Mess THOS J. FISHER & co

SIRS I herewith send you proposition of Jacobs Bros; appd by myself & sisters heirs of Joseph Travers decd to have a lease drawn agreeable to the above tirms and conditions

ELIAS TRAVERS
for Self & Sisters' heirs,

Apr 14 '86.

EXHIBIT No. 10.

Filed with the Auditor.

317 In the name of God, Amen.

I, Nicholas Travers, of the City of Washington in the District of Columbia, being in good health and of sound and disposing mind, memory, and understanding, and being desirous to settle my worldly affairs, whilst I have strength and capacity to do so, do make and publish this my last will and testament.

First, and principally, I commit my soul into the hands of my Creator who gave it, and my body to the earth, to be interred at the discretion of my Executors herein after named— And as to my worldly estate wherewith it has pleased God to bless me, I dispose of the same as followeth:—

Item, *First.* I give and devise to my son Elias all those Lots or parcels of ground with their appurtenances and improvements situate in Georgetown in said District being parts of Lot numbered *Forty*, in the plan of said Town, situate on the street commonly called Duck lane and which were conveyed by deed from S. B. Balch to Elias Erl Travers by deed dated, 2d July, 1805, recorded in Liber O. N.° 14, folio 36 &c in the Land Records of Washington County in said District, to him the said Elias and his heirs and assigns forever, in fee simple— Also Lot numbered Eleven in Square numbered Thirteen in the City of Washington with its appurtenances and improvements to him the said Elias and his heirs and assigns forever, in fee simple— Also one undivided half of Lots numbered Seven and Eight, in Square numbered Thirty-eight, in said City with the appurtenances and improvements to him

the said Elias and his heirs and assigns forever, in fee simple—to be held in conjunction with my son Joseph, as tenants in common and not as joint tenants— Also Lot numbered Two, in Square numbered Two Hundred and ninety-one, containing Fifty five feet in front on the Pennsylvania Avenue, together with Five feet of Lot numbered Three in said Square fronting on said Avenue, so as to make the Lot, hereby devised, sixty feet front on said
318 Avenue, and running back according to the plan of said Lots as laid out by the original plan of the city— Also a Lot composed of parts of Lots numbered nine and ten in said Square, fronting on North E. Street, beginning at the East corner of number ten, as now held by me and running thence West Thirty five feet to an eight feet alley, which alley I do hereby establish, in perpetuity, out of Lot numbered Nine—for the mutual benefit of this Lot now devised to Elias and the adjoining one being the remainder of Lot numbered Nine hereinafter devised to my son James—which said Lot numbered Two hereby devised to said Elias shall be subject to the occupancy by my sister Sidney Travers of the brick house where she now lives for and during her natural life together with enclosure as now established and with a privilege of free and unmolested ingress and egress from her said house to the Pennsylvania Avenue by an alley or other arrangement as she may require and order.

Which last two devises shall be subject to the general provision hereinafter made in case of any sons dying without leaving a wife or child or children—

Secondly. I give and devise to my son Joseph Travers and his heirs forever all that Lot or parcel of ground with the improvements and appurtenances, known as part of Lot numbered Five in Square numbered Two hundred and ninety one aforesaid, beginning on Pennsylvania Avenue at the Corner of Thirteenth Street West, and running thence with said Avenue Sixty seven feet—thence in a line parallel with the eastern boundary line of said Lot N.° Five, until it strikes the rear of Lot numbered Seven in said Square—thence with said Lot numbered Seven, to the South East corner of Lot numbered Six in said Square—thence with said Lot numbered Six seventy five feet to said Thirteenth Street,—thence with said Street Seventy four feet, six inches to the beginning—Also I give
319 and devise to him and his heirs forever, in fee simple, Lot numbered Seventeen in Square numbered Thirty three in said City with the improvements and appurtenances—Also I give and devise to him and his heirs forever, in fee simple, one undivided half part of each of Lots numbered seven and eight, in Square numbered Thirty eight, to be held in conjunction with my son Elias, as tenants in common and not as joint tenants—said Lot numbered Five being subject to the general provision aforesaid hereafter made.

Thirdly—I give and devise to my son Nicholas Travers and his

heirs forever the following Lot or parcel of ground with the improvements and appurtanances, composed of parts of Lots numbered Five and Four in Square numbered Two Hundred and ninety one aforesaid—beginning at the end of Sixty seven feet from Thirteenth Street, on Pennsylvania Avenue, being the corner of the Lot herein before devised to Joseph, and running thence with said Avenue, Fifty feet, thence in a line parallel with the lines of Lot numbered four, to the rear of Lot numbered eight in said Square, thence with the rear lines of Lots numbered Eight and Seven, to the point on number seven where the Lot devised to Joseph terminates—thence with Joseph's said Lot to the point of beginning on the Avenue—this devise to be subject to the general provision hereinafter made—Also all those Lots or parcels of ground for which I am now taxed, composed in part of Lots numbered Four, Five, Six and Seven, in Square numbered Thirty six to him and his heirs forever, in fee simple—Also all that piece or parcel of ground composed of Twenty five feet front and rear being the West part of Lot numbered Eight in Square numbered Two Hundred ninety one, beginning on North E. Street at the West Corner of said Lot and running thence Twenty five feet east to a three feet Alley, which I do hereby establish forever, between said piece or parcel of ground, and the other
320 part of said Lot numbered Eight hereinafter devised to my son James—said piece or parcel of ground to be subject to the general provision hereinafter made—

Fourthly. I give and devise to my son James Travers and his heirs forever, all that piece or parcel of ground, with the improvements and appurtenances, situate on Pennsylvania Avenue in the said City, composed in part of Lot numbered Four, and in part of Lot numbered Three in Square numbered Two Hundred and ninety one aforesaid, and more particularly described as follows—Beginning on said Avenue at the East corner of the Lot hereinbefore devised to my son Nicholas, and running thence with said Avenue to the line of Lot numbered three, being twenty feet—thence with the front line of Lot numbered Three, Fifty feet—thence north in a line parallel to the lines of said Lot numbered Three to the rear of Lot numbered nine—thence West along said Lot numbered nine and part of Lot numbered Eight, seventy feet, until you arrive at a point in the rear line of Lot numbered Eight, from which a line drawn parallel with the lines of Lot numbered three will reach the point of beginning—Also I give and devise to said James and his heirs forever the two following pieces or parcels of ground in said square, with their improvements and appurtenances, to wit: The first beginning on E Street North at the East corner of Lot numbered Eight and running thence along said Lot, West, Twenty five feet to a three feet alley hereinbefore established in perpetuity between a Lot devised to my son Nicholas and this one now under discription, thence with said Alley to the rear of the Lot numbered four—thence East along number Four and number Three, twenty five feet, to the

East line of the Lot, thence North along said line to the beginning—Also all that piece or parcel of ground with the improvements and appurtenances, being part of Lot numbered nine in said Square, beginning on North E. Street at the East corner of Lot numbered eight thence East along said Street to a point which shall be
321 established at the distance of Forty three feet from the East line of a Lot hereinbefore devised to my son Elias composed in part of Lots numbered nine and Ten, which said Forty three feet constitute an Alley of eight feet which I have before established in perpetuity between the Lots of James and Elias—and a lot of Thirty five feet for said Elias; thence South with said Alley, to the rear of said Lot numbered nine, thence West to the line of Lot numbered eight, and thence with the original division line between Lots numbered eight and nine to the place of beginning—All of which devises are to be subject to the general provision hereinafter made.—And I do order and direct that the rents, issues, and profits of the aforegoing estate, after payment of taxes and other necessary charges, shall, as far and as long as may be necessary, be expended in the education of my son James—for which purpose of education I desire that he may be kept at school at the Georgetown College until he is sixteen or seventeen years old, and that he shall then be put to some business which he and his friends may think best.

With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my Will, and I do order and direct, as a general provision, that if any of my sons should die without leaving a wife, or a child or children living at his death, then his estate herein devised to him, saving and excepting those portions thereof expressly granted and so named to be "in fee simple", and which they can sell and dispose of as they think fit, shall go, and be invested in fee, to my surviving sons and the child or children of such as may be dead, such child or children representing the share of the father—but if either of my sons shall, at his death, leave a wife either with or without a child or children, such wife shall be entitled to her Dower rights and privileges.

322 *Fifthly.* I give and devise to my daughter Mary, and to her heirs forever, in fee simple, the following portions of my estate, to wit: the Lots and grounds with the improvements thereon, situate on Jefferson Street in Georgetown aforesaid, bought from Anthony Reintzell by deeds duly recorded on the Eighteenth day day of April 1803, in the land records of Washington County.

Sixthly. I give and devise to my daughter Elizabeth my old Mansion House and Lot situated on the Street formerly called Falls Street, and now Bridge Street continued, in Georgetown aforesaid, being composed of part of Lot numbered Thirteen, bought from Walter S. Chandler, both of which deeds are duly recorded in the County aforesaid, and also in the County of Prince George in the

State of Maryland, and to her heirs forever, but in case said Elizabeth should die without having a lawful heir or heirs of her body, living at the time of her death, then the above estate shall go in fee simple to such of my sons as may be living at the death of said Elizabeth, but not to the child or children of such as may be dead— Also I give and devise to her one half of the rents, issues, and profits arising out of Lot number Five, in Square numbered Three Hundred and Seventy-nine in said City, and the improvements thereon erected, to be received and enjoyed by her, if she shall so long live, until my son James shall arrive at the age of twenty-one, if she shall previously have died— and in case of the death of said Elizabeth before said James shall be or would have been of age, and leaving no child or children lawfully begotten, then her portion shall go to, and be enjoyed by, my daughter Sidney Virginia until James shall be or would have been of age as aforesaid.

Seventhly. I give and devise to my daughter Sidney Virginia one half of the rents, issues, and profits arising out of Lot numbered Five in Square numbered Three Hundred and Seventy-nine, in said City, and the improvements thereon erected, to be received
323 by her during the same period and on the same terms, and like benefit of survivorship my daughter Elizabeth, in case my said daughter Sidney Virginia should die first— Also, I give and bequeath to her all my Silver plate and Silver ware of every kind.

Eighthly. I do hereby order and direct that, when my son James shall arrive at the age of twenty-one years, or at the period when he would have so arrived, Lot numbered Five, in Square numbered Three Hundred and seventy-nine aforesaid, with the improvements thereon, shall and may be sold, if a majority of my sons then living shall so determine; and the proceeds of such sales shall be equally divided among my surviving sons, but not among the children or child of any of said sons who may have died.

Ninthly. I do order and direct my Executors to furnish each of my daughters a good bed and the necessary bedding.

I do further order and direct that my Executors shall dispose of all Bank stocks or other stocks, and all my other real or personal estate, not herein devised and bequeathed, to the best advantage; and the proceeds thereof, together with any moneys that may be on hand, or loaned out, shall be equally divided by them among my sons, or their child or children, and my two daughters Sidney Virginia and Elizabeth, or their child or children, share and share alike.

I further desire my children to consult with and take the advice of my friend Mathew St. Clair Clarke, at all times, on matters connected with their respective shares of my estate.—

I do hereby constitute and appoint my friend Mathew St. Clair Clarke, and my sons Joseph and Elias, Executors of this my last Will and Testament.

I do further order and direct, that if any debts shall be unpaid at

my death, such debts and the necessary expenses incurred by my Executors, shall be paid out of my rents or personal estate, before my children shall draw the said rents.—

As to a proper Monument over my wife and myself, I leave
324 that to my Executors, and I do order them also to finish the building now erecting on the Lot occupied by my Sister Sydney in case it be unfinished at my death—

Signed, sealed, published, and declared as and for his last Will and Testament, who, in his presence, and in the presence of each other, have affixed our names as Witnesses.—this 10th July, 1840—

NICHOLAS TRAVERS [SEAL]

J. MONTANDON
J. BEARDSLEY
JOHN. H. EBERBACH

325 DISTRICT OF COLUMBIA, } Orphan's Court,
Washington County, to wit; } February 2, 1849.

This day appeared, John H. Eberbach one of the subscribing witnesses to the aforegoing last will & testament of Nicholas Travers late of Washington County, aforesaid, deceased, & made oath on the Holy Evangels of Almighty God, that *He* did see the Testator therein named sign & seal this will; that he published pronounced & declared the same to be his last will & testament, that at the time of so doing he was to the best of his apprehension of sound & disposing mind, memory & understanding— and, that he together with Julian Montandon & Joseph Beardsley the other subscribing witnesses, respectively subscribed their names as witnesses to this will; in the presence & at the request of the Testator, and in the presence of each other— and that Joseph Beardsley has since departed this life—

Test; ED: N. ROACH
Regr, Wills

326 (Codicil first)

Be it known unto all men by these presents, That whereas I Nicholas Travers of Washington City, have made and declared my last Will and Testament in writing, bearing date the 10th day of July 1840, I the said Nicholas Travers, for divers good causes, do by this my Codicil to the aforesaid Will affirming and ratifying said Will, except as herein after excepted and revoked, do herein and hereby revoke, disannul and make void all and every devise, bequest, legacy or provision contained in said Will to and in favour of My Daughter Elizabeth, saving and excepting so far as she may be interested in the following clause in said Will, towit "I do further order " and direct that my Executors shall dispose of all "Bank Stocks or other Stocks, and all my other real or "personal

estate, not herein devised and bequeathed "to the best advantage; and the proceeds thereof to-"gether with any monies that may be on hand, or "loaned out, shall be equally divided by them among "my sons or their child or children, and my two "daughters Sidney Virginia and Elizabeth, or "their child or children, share and share alike—" And with regard to the estate devised and bequeathed to my said daughter Elizabeth I do hereby give and devise the House and Lot in Georgetown named in the Sixth Clause in my said Will, to my sons Elias, Joseph, Nicholas and James to be held by them jointly and the rents issues and profits thereof to be divided, among them and the survivors of them from time to time until there shall be but one survivor and then the said House and Lot shall become his in fee simple—Also I give and devise to my several sons as aforesaid the one half of the rents, issues, and profits of the Lot,
327 number Five, in Square number Three hundred and seventy nine in the City of Washington with the improvements thereon erected to be equally divided among them until my son James is of the age of twenty one, at which time, if they be all living, then the same may be sold, if they or a majority of them elect so to do, and the proceeds shall be equally divided among them, or such of them as may then be living at the time of said sale, but if not sold then the rents issues and profits shall be equally divided until there shall be but one survivor to whom the same shall then pass in fee simple—

Signed, sealed published and declared at the City of Washington, this 20th July 1843. before us who have signed the same in presence of said Nicholas Travers, at his request, and in presence of each other—on the day and year last named

N. TRAVERS [SEAL]

Witnesses { J. MONTANDON
RICHD P. JACKSON
J. H. EBERBACH

328 DISTRICT OF COLUMBIA, } Orphan's Court,
Washington County, to wit; } February 2d, 1849.

This day appeared, Richard P. Jackson & John H. Eberbach two of the subscribing witnesses to the aforegoing Codicil to the last will & testament of Nicholas Travers late of Washington County, aforesaid deceased, and severally made oath on the Holy Evangels of Almighty God—that they did see the Testator therein named sign & seal this codicil, that he published pronounced & declared the same to be a codicil to his last will & testament, that at the time of so doing he was to the best of their apprehension's of sound & disposing mind memory & understanding—& that they together with Julian Montandon the other subscribing witness, respectively

subscribed their names as witnesses to this codicil, in the presence & at the request of the Testator, & in the presence of each other— Test;

ED: N. ROACH
Regr, Wills

329 Be it known unto all men, by these presents, that whereas I Nicholas Travers of Washington City have made and declared my last Will and Testament in writing, bearing date the tenth day of July, anno Domini Eighteen hundred and forty—and did make, publish and declare a certain codicil thereunto, bearing date the twentieth day of July, anno Domini Eighteen hundred and forty three—I the said Nicholas Travers, for divers good causes, do by this my second Codicil to the aforesaid Will, affirming and ratifying said Will except as hereinafter excepted and revoked, do herein and hereby revoke, disannul and make void all and every devise, bequest, legacy or provision contained in said Will and first Codicil which is or would be inconsistent with the several and respective devises, bequests, legacies or provisions made, ordained, published, and declared hereinafter—

I do hereby give and devise to my Son Joseph in fee simple all the Lot of ground and improvements thereon situate on Falls street now Bridge Street in Georgetown in the District of Columbia, heretofore devised to my daughter Elizabeth—

I do hereby revoke and make void all devises, bequests and provisions of and concerning Lot number Five in Square number Three hundred and seventy nine in the City of Washington and the improvements thereon, and do hereby order and direct that the same shall be holden by my Executors for seven years after my death, and that the rents issues and profits thereof, after deducting the necessary expenses, shall be expended by them in payment of my debts, in addition to my Bank Stock heretofore directed to be so applied, and that after said debts shall be so paid, then my said Executors shall, in like manner after necessary expenses, pay over in equal proportions to my four Sons and three daughters the
330 said rents issues and profits during the remainder of the said term of seven years and at the end of said period the same shall or may be sold by my said Executors, and the nett proceeds thereof shall be paid by them to my four Sons, share and share alike, at such times as the purchase money shall be received by said Executors—or to the survivors or survivor of them—or in case they my said Sons should elect to retain the same then I give and devise the same to them or the Survivors or survivor of them at the termination of said seven years in fee simple—

I do hereby revoke and disannul so much of my said Will as respects that portion of the Lots on Pennsylvania Avenue whereon I have built a brick House West of my own residence and adjoining thereto, and do hereby give and devise said piece or parcel of

ground, in Square number Two hundred and ninety one, whereon said three Story brick House has been erected, embracing also the ground in the rear of said house and running back, in equal width with the front of said house, to the rear of said piece or parcel of ground according to the depth of said Lot or Lots as laid down in the plan of said City, to my Son Elias in fee Simple, he paying out of the annual rent thereof to my Son Nicholas One hundred dollars per annum, without interest, for Ten years—said annual payment to begin, after two years from my death, during which two years said Elias shall pay One hundred dollars per annum to my Executors towards payment of my debts—and then his title in fee Simple shall be complete—

I do hereby revoke all and every bequest of my Silver plate and Silver ware and order the same to form part of my personal estate in the hands of my Executors—

I do hereby give and devise to my Granddaughter Mary Winne, daughter of my daughter Mary, the Lot of ground numbered Two, in Square numbered Two hundred and ninety, in the City of Washington in fee simple—

331 I do hereby order and direct that no demand shall be made by my Executors, or heirs, for or on account of any money expended by me, on a Lot in Square numbered Two Hundred and fifty six for my Sister Sidney hereby releasing her from all indebtedness therefor or on account of said Lot and improvements—

I do hereby order and direct my Executors to sell and dispose of all and all manner of my estate Real and personal not herein and heretofore devised or bequeathed and after the erection of a suitable monument over my Wife and myself to divide the residue share and share alike among my surviving children—

Witness my hand and Seal this Twenty seventh day of August 1846—

NICHOLAS TRAVERS [SEAL]

We the Subscribing witnesses being requested by said Testator Nicholas Travers to be present at his publication of this his second Codicil to his last Will and Testament have at his request, in his presence and in presence of each other signed our respective names as witnesses thereto on the day and year last aforesaid—

J. MONTANDON
HENRY; KUHL
JOHN ALEXANDER

332 DISTRICT OF COLUMBIA, } Orphan's Court,
Washington County, to wit; } February 2d, 1849.

This day appeared, Henry Kuhl & John Alexander two of the subscribing witnesses to a codicil, to the last will & testament & codicil, of Nicholas Travers late of Washington County aforesaid, deceased, & severally, made oath on the Holy Evangels of Almighty God, that they did see the Testator therein named sign & seal, this codicil, that he published pronounced & declared the same to be a codicil, to his last will & Testament & codicil, that at the time of so doing he was to the best of their apprehension's of sound & disposing mind, memory & understanding— and that they together with Julian Montandon the other subscribing witness, respectively subscribed their names as witnesses to this codicil, in the presence & at the request of the Testator, & in the presence of each other—

Test: ED. N. ROACH,
Regr, Wills

333 Be it known unto all men, by these presents, that I Nicholas T-avers of Washington City did make and declare my last Will and Testament bearing date the tenth day of July, Anno Domini, Eighteen hundred and forty, and did make publish and declare a certain codicil thereunto, bearing date the twentieth day of July, Anno Domini eighteen hundred and forty three, and on the Twenty Seventh day of August, Anno Domini eighteen hundred and forty six did make publish and declare another or second Codicil to said last Will and testament; and whereas certain circumstances and deliberations have induced me to alter and change said Second Codicil, in some respects, therefore I the said Nicholas, without impairing any one or other of the provisions in said Second Codicil, do hereby revoke, disannul and make void the following clause and devise in said Codicil, towit, "I do hereby revoke and disannul so much of my said Will "as respects that portion of the Lots on Pennsylvania Avenue "whereon I have built a brick House, West of my own resi-"dence and adjoining thereto, and do hereby give and devise "said piece or parcel of ground, in Square number Two Hundred "and ninety one, whereon said three story brick house has been erected, "embracing also the rear of said house, and running back in equal "width with the front of said house to the rear of said piece or parcel "of ground, according to the depth of said Lot or Lots as laid down in "the plan of said City, to my son Elias in fee simple, he paying "out of the annual rent thereof, to my Son Nicholas, one hundred "dollars per annum, without interest, for Ten years—said annual "payment to begin after two years from my death—during which "two years said Elias shall pay One hundred dollars per "annum to my Executors towards payment of my debts—and "then

his title in fee simple shall be complete—" And in lieu thereof I do hereby give and devise all said Lot or part of Lots, so as aforesaid described, with the house and other improvements and appurtenances, to my Son James and his heirs, subject to the
334 express Stipulations and restrictions contained in the Will to which this is a Codicil, wherein I declare that all and every portion of my real estate not devised by the use of the words "in fee simple" shall be held by such devisees for life, and then according to stipulations and restrictions as therein contained and declared by said Will— And further I do order and direct that out of the rents issues and profits of said House and Lot, or from any other part of his estate, said James shall pay to my son Nicholas One thousand dollars, payable annually at the rate of One hundred dollars, without interest— and also at the same periods and without interest, said James shall pay to each of my sons Elias, and Joseph, and to my daughters, Mary and Virginia, Fifty dollars per annum for ten years— making three thousand dollars chargeable on said House and Lot,—

Signed, sealed, published and declared this twenty sixth day of June 1848— the word "Twenty" being first interlined—

NICHOLAS $\overset{\text{his}}{\underset{\text{mark}}{\times}}$ T-AVERS [SEAL]

We the subscribing witnesses being requested by said Testator Nicholas Travers to be present at this his third Codicil to his last will and testament have at his request, in his presence and in presence of each other signed our respective names as witnesses thereto on the day of the above publication and signature of this Codicil— He the said Testator having made his mark to his name in consequence of palsy in his hands which prevents him from writing—

J. MONTANDON
JOSEPH HUGGINS
HENRY KUHL

335 DISTRICT OF COLUMBIA, } Orphan's Court,
Washington County, to wit; } February 2d, 1849.

This day appeared, Joseph Huggins and Henry Kuhl two of the subscribing witnesses to the aforegoing codicil, of Nicholas Travers late of Washington County aforesaid, deceased, & severally made oath on the Holy Evangels of Almighty God, that they did see the Testator therein named sign & seal this codicil (by making his mark thereto) that he published pronounced & declared the same to be a codicil to his last will and testament, & to the first and second codicil's to the same, that at the time of so doing he was to the best of their

apprehension's of sound & disposing mind, memory & understanding—and that they together with Julian Montandon the other subscribing witness, respectively subscribed their names as witnesses to this codicil, in the presence & at the request of the testator, & in the presence of each other—

Test; ED. N. ROACH
Regr, Wills

336 DISTRICT OF COLUMBIA TO WIT }

At a Circuit Court of the District of Columbia begun and held in and for the County of Washington at the City of Washington on the third Monday of October being the twenty first day of the same Month in the year of Our Lord one thousand Eight hundred and fifty, and of the Independence of the United States the seventy fifth

Present William Cranch Chief Judge Hon James T Morsell James Dunlop Assistant Judges Richard Wallach Esquire Marshal John A Smith, Clerk

In the record of the proceedings of said Court among others are the following To wit

JAMES & MARY WYNNE ELIZ-TH TRAVERS
Wm & Sydney Mitchell Caveators
vs
JOSEPH TRAVERS ELIAS TRAVERS Caveatees

Be it remembered that heretofore to wit on the 24" March 1849 the Caveators by David Stewart & J H Bradley Esqrs and the Caveatees by W Redin & J M Carlisle Esqrs filed in the Circuit Court here certain issues from the Orphans Court relating to the Will of the late Nicholas Travers more particularly set forth below to be tried by a Jury &c and now to wit the fourteenth March in the year Eighteen hundred and
337 fifty one on the finding of a Jury it is considered by the Court, "that the instrument of "writing purporting to be the last will and "Testament of Nicholas Travers of the City of "Washington bearing date the 10" day of July "1840 produced as such and offered for "Probate in the Orphans Court for the County "of Washington by the Executors therein "named being the same writing mentioned "and referred to in the issue from the said "Orphans Court in this case is the true last "Will and Testament of said Nicholas "Travers: further that the other instrument "of writing purporting to be a codicil to the "said Will of said Nicholas Travers dated "the 20" day of July 1843 the same referred "to in said issue is a true codicil to said "Will further that the other instrument of "*of* writing purporting to be a further codicil "to

said Will of said Nicholas Travers dated "the 27" August 1846 also referred to in said "issue is a further true codicil to said Will "of said Nicholas Travers, and further that the "other instrument of writing purporting to "be a further codicil to the said Will of said "Nicholas Travers dated the 26" day of June "1848 also referred to in said issue is also "a further true codicil to said Will of said "Nicholas Travers" And order that it be so certified
338 to the Orphans Court for the County of Washington in the District aforesaid which is done accordingly

In Testimony whereof I hereto subscribe my name and affix the seal of the said Court this fifteenth day of March A D 1851

[SEAL] JNO A SMITH *Clk*

339 Supreme Court of the District of Columbia,

Holding a Probate Court.

DISTRICT OF COLUMBIA, *to wit:*

I, LOUIS A. DENT, Register of Wills for the District of Columbia Clerk of the Probate Court, do hereby Certify, That the foregoing are true copies of the original will, and three codicils of Nicholas Travers, deceased, and the proof thereof, and of a certain other original paper filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, in case No. 3008, estate of Nicholas Travers, deceased, the same constituting the record of certain proceedings had in said cause.

I Further Certify, That I have compared said copies of will and papers with the original records and papers, respectively, in said office, and find them to be full, true and correct transcripts thereof.

Witness my hand and seal of the said Probate Court, this seventh day of January, A. D. 1902.

Seal Supreme Court of the District of Columbia. Probate Jurisdiction.

LOUIS A. DENT
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

340 EXHIBIT No. 11.

Power of Attorney.

Know all Men by these Presents, That I, Elizabeth Travers, in Religion, Sister Mary Agatha, of Frederick City, Maryland, have made, constituted, and appointed, and by these presents do make, constitute and appoint Thomas J. Fisher, and Company of Washington, D. C., my true and lawful Attorney, irrevocable for me and in my name, place and stead, hereby annulling and revoking all former Powers of Attorney or authorizations whatever in the

pr-mises, to represent me in the collection of rents payment of taxes, making of repairs, Insurance, and in the performance of all and every act necessary in the care of all the property located within the District of Columbia and belonging to the late Joseph Travers, also with power to lease the same in my name from time to time as may be necessary and to, from time to time, furnish any further evidence necessary, or that may be demanded, giving and granting to my said Attorneys full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes, as I might or could do, if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that my said Attorneys or their substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, this Eighteenth day of December, eighteen hundred and Eighty-two.

ELIZABETH TRAVERS, [L. S.]
in Religion SR MARY AGATHA [L. S.]

ATTEST:—By two persons who can write.
JAMES M. SHERRY
JOHN EISENHAUER

341 UNITED STATES OF AMERICA, }
State of Maryland, Frederick County } *s.*

BE IT KNOWN, That on this eighteenth day of December, in the year eighteen hundred and eighty two, before me, the undersigned, a Notary Public of said State of Maryland in and for said County, personally appeared Elizabeth Travers, in religion Sister Mary Agatha to me well known to be the identical person who executed the foregoing Letter of Attorney, and the same having been first fully read over to her and the contents thereof duly explained, acknowledged the same to be her act and deed, and that I have no interest, present or prospective, in the claim.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

[SEAL] WILLIAM WALSH
Notary Public.

342 EXHIBIT No. 12.

Filed before the Auditor.

Know all Men by these Presents, That We, James Travers and Elias Travers, both of the State of Maryland, have made, constituted, and appointed, and by these presents do make, constitute and appoint Thomas J. Fisher and Company, of City of Washington,

District of Columbia true and lawful attorneys, irrevocable for us and in our name, place and stead, hereby annulling and revoking all former Powers of Attorney or authorizations whatever in the pr-mises, to represent us in the collection of rent from Lot 5 Square 291 in the City of Washington, District of Columbia. Improved by buildings known as Nos. 1233–1235 1237–1239 Pennsylvania Avenue north west, and No. 413–13th Street northwest—and to act for us in any legal proceedings which may be necessary in the collection of said rents, giving and granting to our said Attorneys full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes, as we might or could do, if personally present at the doing thereof, hereby ratifying and confirming all that our said Attorneys substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof, we have hereunto set our hands and seals, this Twenty-fifth day of October, eighteen hundred and Eighty-two

ELIAS TRAVERS, [L. S.]
JAMES TRAVERS, [L. S.]

ATTEST:—By two persons who can write.
JOS. TRAVERS,
S. V. GRAYSON

343 [Endorsed]: Power of Attorney. From James and Elias Travers to Thos. J. Fisher & Co.

344 EXHIBIT No. 13.

Filed with the Auditor.

Know all Men by these Presents, That I, Sidney V. Mitchell of the City of Washington, in the District of Columbia, have made, constituted, and appointed, and by these presents do make, constitute and appoint Thomas J. Fisher and Company, of Washington, D. C., my true and lawful Attorneys, irrevocable for me and in my name, place and stead, hereby annulling and revoking all former Powers of Attorney or authorizations whatever in the pr-mises, to represent me in the Collection of rents, payment of taxes, making of repairs, Insurance and in the performance of all and every act necessary in the care of all the property located within the District of Columbia and belonging to the late Joseph Travers, giving and granting to my said Attorneys full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes, as I might or could do, if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that my said Attorneys or their substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, this Seventh day of December, eighteen hundred and Eighty-two (1882)

SIDNEY V. MITCHELL, [L. S.]

ATTEST:—By two persons who can write.

HENRY K. WILLARD

THOS W. FISHER

345 [Endorsed]: Power of Attorney. In the Matter of Sidney V. Mitchell to Thos. J. Fisher & Co.

EXHIBIT No. 14

Filed with the Auditor.

Lease.

346 This Agreement made this Thirtieth day of April, A. D. 1886, between Elias Travers, Mary Wynne, Sidney V. Mitchell and Elizabeth Travers, known in religion as Sister Mary Agatha, heirs at law of Joseph Travers, of the first part and Henry H. Jacobs and Montague D. Jacobs, trading under the firm name of Jacobs Brothers, of the second part:

Witnesseth, That the said parties of the first part do hereby demise and let unto the said parties of the second part as tenants for Ten (10) years from the first day of May, A. D. 1886, the Store and premises known as No. 1229 Pennsylvania Avenue north-west, Washington, D. C. The said parties of the second part hereby agree to take and hold the said premises as tenants for Ten (10) years from the first day of May, A. D. 1886, and to pay therefor to the said parties of the first part a monthly rent or sum of Eighty-three and 33-100 ($83.33.) Dollars; the first payment to be made on the last day of May, A. D. 1886, and the subsequent payments to be made monthly on the last day of each and every month. The said parties of the second part agree:—

1st. To insure the property against loss by fire for the sum of Five thousand (5000) Dollars to the satisfaction of the parties of the first part; the policy of insurance to be deposited with Thomas J. Fisher & Co. as agents for the parties of the first part.

2nd. To lower the floor to the level of the Street.

3rd. To take out partition wall of passage, so as to widen the Store.

4th. To put in new front of French plate glass with elegant mansard show-windows, and an entire new entrance to upper portion of house of French plate glass.

5th. Put fancy iron cornices over each window of entire front of building; also to paint the entire front.

6th. To repair and paper the interior of Store., the improvements and alterations above enumerated to be made within six (6) months from the first day of May, A. D. 1886 and to be done in a substantial and workmanlike manner and to remain at the end of the Lease and become the property of the said parties of the first part, clear of all cost and expense to them, the said parties of the first part.

347 Party of the second part to make good all damage done to walls or otherwise of adjoining property.

Party of second part, in addition to above specified improvements, to keep the entire premises, including Plumbing and Roof, in good order and condition during the term of this Lease, at their own cost and expense.

The said parties of the second part also agree that they will pay all gas and water-rent bills chargeable against the premises during their occupancy; that they will not use the said premises, or any part thereof, for any unlawful or dangerous purpose, but will occupy the same only as a Store and Dwelling and will not sub-let the premises or transfer possession thereof, or carry on any business therein except that of a Store and Dwelling, without the written consent first had and obtained from the said parties of the first part, and at the expiration of their tenancy will deliver up the premises in the like good order in which they now are, ordinary wear and tear and damage by the elements only excepted.

The parties of the second part further agree that if any installment of rent shall not be paid when the same shall be and become due and payable, as hereinbefore provided, (whether demand shall have been made for the same or not), or if they shall in any other respect violate any of the conditions and covenants contained in this agreement, then it shall be lawful for the said parties of the first part to recover possession of said premises, the said parties of the second part hereby waiving all right to claim a thirty-day's notice or other legal notice to remove from said premises.

It is further understood and agreed that the covenants and agreements contained in the within agreement are binding on the parties hereto and their legal representatives, and no waiver of one breach of any covenant herein shall be construed to be a waiver of the covenant itself, or of any subsequent breach thereof.

348 In testimony whereof, we have hereunto set our hands and seals to this and duplicate of like tenor and date.

ELIAS TRAVERS [SEAL]
MARY WYNNE [SEAL]
SIDNEY V MITCHELL [SEAL]
ELIZABETH TRAVERS [SEAL]
MONTAGUE D JACOBS [SEAL]
HENRY H. JACOBS [SEAL]

[Certificates of acknowledgment annexed.]

349

EXHIBIT No. 15.

Filed with the Auditor.

Thos. J. Fisher. E. J. Stellwagen. Thos. M. Gale.

Thos. J. Fisher & Co.,
Real Estate Brokers & Auctioneers,
Office, 1324 F Street, Northwest.

WASHINGTON, D. C., *18" April 1884*

Sister MARY AGATHA TRAVERS,
Convent of the Visitation Frederick City, Md.

Dear Madam:—In order that you may understand fully the condition of the property of your deceased brothers Joseph and James in which you have one fourth interest we send the following statement viz—

Estimated Value of property left by Joseph.....		$175000.00
Estimated Value of property left by James.....		75000.00
		$250000.00
Present Income from property left by Joseph per annum.....		$10030.00
Less Taxes, Insurance and Commission.....		2420.00
		$7610.00
Mrs. Jos. Travers for her dower interest ⅓.....		2533.33
		$5076.67
To Elias Travers ¼	$1269.17	
" Mrs. Mitchell ¼.....	1269.17	
" Mrs. Wynne ¼.....	1269.17	
" Sister Mary Agatha ¼.....	1269.16	
	$5076.67	

350

Present Income from property left by James.....		$4840.00
Less Taxes Insurance & Commissions.....		1060.00
		3780.00
To Elias Travers ¼	$945.00	
" Mrs. Mitchell ¼	945.00	
" Mrs. Wynne ¼	945.00	
" Sister Mary Agatha ¼	945.00	
	$3780.00	

Yours Very Respectfully

THOS. J. FISHER & CO.

Please return.

EXHIBIT No. 16.

Filed with the Auditor.

Thos. J. Fisher. E. J. Stellwagen. Thos M. Gale.

Thos. J. Fisher & Co.,
Real Estate Brokers & Auctioneers,
Office, 1324 F Street, Northwest
(Near Ebbitt House.)

351 WASHINGTON, D. C., *5" Dec. 1882*

Mrs., S. V. MITCHELL
3130 "P" St. n. w.

Dear Madam:—I have had an interview with Elias to-day and have arranged with him as to Joseph's property in a manner which I think will be satisfactory to all the heirs and avert the expense and annoyance of a suit.

Will you please call at our office and see me to-morrow at 12 o'clock noon, if convenient.

Very Truly Yours THOS. J. FISHER & CO.

[Letter head.]

352 WASHINGTON, D. C., *29 Octo., 1883*

Mrs. SIDNEY V. MITCHELL
3130 "P" st., n. w.

Dear Madam:—A telegram was recd this morning informing us of the illness of your brother Mr. James Travers at Point Pleasant N. J. and asking that our Mr. Fisher come on at once.

A second despatch just at hand asks that we inform you of Mr. Traver's illness.

Yours Very Truly THOS. J. FISHER & CO.

[Letter head.]

353 WASHINGTON, D. C., *12" June 1883*

Sister MARY AGATHA TRAVERS
Academy of the Visitation, Frederick, Md.

Dear Sister:—Your favor of yesterday recd. We have sent Mr. Wm. B. Webb Five hundred (500) Dollars with instructions to forward it immediately to your Sister Mrs. Wynne.

We have urged upon Mr. Webb the importance of its prompt transmission and have no doubt he will make no delay.

Very Truly Yours

THOS. J. FISHER & CO.

Advanced by Elias—paid by him.

[Letter head.]

354 WASHINGTON, D. C., *9th June 1883*

Sister MARY AGATHA TRAVERS
Academy of the Visitation, Frederick, Md.

Dear Sister:—Your favor of 6th inst. at hand. In reply would say that the $500 advanced Mrs. Wynne by us was in addition to $500 previously loaned by Elias as we understand it. We did not consult Elias about the advance but heard incidentally from him that he he had sent Mrs. W $500 some time last fall. We did not intend that you should enter into any formel bond or securityship in the matter of this second advance, a simple note from you to us stating that you would pay any balance due
355 us on account of the proposed advance in the event of Mrs. W's death before her share of the income had re-imbursed us. We return herewith your brother's letter.

Yours Very Truly

THOS. J. FISHER & CO

[Letter head.]

356 WASHINGTON, D. C., *30 May 1883*

SISTER MARY AGATHA TRAVERS
Academy of the Visitation Frederick, Md.

Dear Sister:—Desiring to meet your wishes in regard to a further advance to Mrs. Wynne we have decided to place five hundred (500) Dollars in the hands of Mr. Webb to send her by next steamer, provided you will write us a note obliging yourself to pay whatever should be due us in the event of her death before we are reimbursed from the income of the estate.

The present gross income from the Estate is say.....	$10000
Less Taxes, Ins., Com., & Repairs say.....	2300
	$7700
357 One third to widow.....	$2566.67
One fifth to Mrs. Mitchell.....	1026.67
One fifth to Mrs. Wynne.....	1026.67
" " " Sister M. Agatha.....	1026.67
" " " Jas. Travers.....	1026.66
" " " Elias Travers.....	1026.66
	$7700.00

Unforeseen contingences may arise such as loss of income by reason of a property becoming vacant and remaining so for a time, destruction by fire &c &c but we think it safe to say that Mrs. Wynne will receive about $1000 per annum under the present circumstances.

Very Respectfully Yours THOS. J. FISHER & CO.

358 [Letter head.]

WASHINGTON, D. C., *26th May 1883*

Sister MARY AGATHA TRAVERS
Academy of the Visitation Frederick. Md.

Dear Sister—Your favor of yesterday is just recd. this afternoon as we are about to close the office.

We will write you in full early next week and hope to arrange so that we may be able to advance the additional $500 to Mrs. Wynne as you request.

Very Truly Yours THOS. J. FISHER & CO.

359 EXHIBIT No. 17.

Filed with the Auditor.

P. O. LAUREL MD *June 4' 1883*

Sister LIZZIE

Yo'rs of 2nd Recd.

As to Mary I have been expecting to hear of her arrival here about the middle of this month, but your letter surprises me, as I thought I had made the necessary arrangements (Mess. W Webb, having already sent $500) to place with the Steam-ship Co in, N. Y.—money enough for them to furnish tickets & pay expenses of their journey to the U. S. (Washington) I had no idea but such was the case—I am willing to do & pay her way home, but am and from the first unwilling to send money to that country to pay debts of which I know nothing. (It is intimated or supposed she has a law suit pending there.) Being an invalid & confined to the house for the last two & more years, I am unable to take an active part in in the matter—Without some such an arrangement as I have stated can be made, it will in my opinion, be useless to send money there, as it will be gobbled up as fast as sent—If I am certain she can get away—I will go security for so much as will bear her travelling expenses &c.

Hoping you enjoy health I. remain

Your Brother ELIAS TRAVERS

360 LAUREL, *Oct 31' 1883.*

JENNIE: Yrs of 30th Recd Enclosed find an Order on Mr Jackson for amt——I am sorry you have to remind me of it but it is all right—though I had not forgot—but am so full of pain I dread doing most anything I am far from being well.—I should like to see Mary & her daughter & would be glad if they could come out to our house if possible, as for me I can not go in—

I have just recd a Telegram from N. J. "That James is very ill—Doctor says he cannot recover"

Joe will see you to-morrow as also Mr. Fisher & may go on next day to Point Pleasant.

Confer with him in the matter

Yr. Brother ELIAS TRAVERS

EXHIBIT No. 18.

Filed with the Auditor.

361 CONVENT OF THE VISITATION

Frederick, Dec. 15 –82

MY DEAREST, DEAREST SISTER.

I have not had one word from Elias yet, but I send under cover by this Steamer a letter I received a few days ago from Mr. Jackson. It will convey its own meaning to you better than I could interpret it. I am so full of thanks to him for his great kindness and the help he offered that my heart goes out of itself in joy. This is not all. Mr. Webb has written to me and I trust also to you to say that Elias has requested him to take in charge the affairs of the heirs generally, and particularly to administer upon poor, dear Joe's estate, both in the City and in St. Mary's County.

He died without having made a will and in questioning the rights of the widow, Mr. Webb and Mr. Totten, the last named Counsel for the Baltimore and Potomac Rail Road Com-
362 pany, decided that the property was his absolutely and on his death without a will descended subject to the Widows dower to his brothers and sisters equally, and that the rents must be equally divided among us.

They submitted this opinion to Elias who consented to it and instructed Mr. Webb in writing to prepare such a paper for signature as would put this conclusion in a form to be acted upon.

He sent me a power of Attorney to sign in favor of Mr. T. Fisher & Company, but I waited to hear from Jimmy, and find that he is delighted for us all to share alike. Nothing farther has been done yet, but something will be *soon*. I have asked Mr. Webb if a few hundred dollars could be advanced and transmitted to you immediately. I would not advise you to risk coming on this winter; the season is very severe, neither of you accustomed to the climate, and Louie just recovered from illness; you might find the
363 attempt dangerous. Indeed no one seems to think it would be right for you to venture. I do not understand why Mr. Jackson applied to Jim instead of Elias, nor why Elias had Mr. Webb to administer instead of Mr. Jackson who expected to act. The latter has been very kind to me, and I am somehow sorry, but

I think Webb will do the best for you and me. Jennie intended employing him under all circumstances.

O my dear Mary! what I have suffered and still suffer on yours and Louie's account! I hope you can yet hold out a little, for relief will surely come to you. I have done all I could, but that all has been nothing. Now I leave it to God, begging you to write to Mr. Webb and Mr. Jackson too. I pray so hard for the recovery of Louie's strength that it must be well with her now. I am thinking of you both, night and day, and grieving because I can do nothing.

The dreadful distance and the length of time that must ensue before word can come from you almost deprives me of life; I assure you there have been times when I thought I must die of anxiety and disappointment. I have pictured every horror to my
364 mind and at last been obliged to sink down with all hope gone, except what one rests in God. So, as you are His, I believe He will keep you both in safety till the hour comes when you will be back in your own country and among your own people.

How I want to see you and the dear beloved Louie! I am sorry that her timidity keeps her from writing, for indeed She wrote exceedingly well; few believed it possible for anyone to express herself so admirably in a language she had never heard spoken. I imagine you have received the letter I wrote the last of November. I also wrote to Mr. Magee, but not knowing how to direct my letter think it did not reach him. You will soon be able to acquit yourself of your debt to him and I hope borrow sufficient for present needs. Oh! what a crown of sorrow not to be able to send you money now! May our dear Lord supply the need to you by raising friends for present emergency. And my dearest sister, let me beg you to write without delay; I ask it for the good it will certainly do you, let alone the hungry sick desire I have to hear from you. Let me know how Louie is and that you have not suffered, sometimes I fear from want. Oh! what fear I have undergone on your account. What terror! it has been enough to kill. If I should write pages

[Attached to the above letter is the following slip]:

[Front.]

365 be one of choicest blessings and prosperity to both! In the hearts of Jesus & Mary
Your devoted Sister
MARY AGATHA TRAVERS of the Visitation
B. V. M. Dieu Soit Beni—

Some of your Sisters think Mr. Magee a brother of the late, lamented, D'Arcey Magee—Will you let me know.

[Back]

366 I must see you first if God spares

The little ivory painting I send to Mrs. Magee; I am in doubt whether she is a Catholic or not, but any how it is a testimonial of my

appreciation; of little value, true, in proportion to her great kindness, yet something to say I understand. Tell her that my gratitude to herself & Mr. Magee knows no bounds for your sake. I shall write to Mr. Magee whatever information I can get in reference to your return at the earliest date. Meantime. *Patience!*

367 EXHIBIT No. 19.

Filed with the Auditor.

In the name of God, Amen:

I, Elizabeth Travers, Known in religion by the name of Sister Mary Agatha, now of Georgetown, in the District of Columbia, being of sound and disposing mind and understanding do make, publish and declare this to be my Last Will and Testament hereby revoking all former Wills by me at any time made, and I dispose of my estate as follows:

First—I give, devise and bequeth to my Executors hereinafter named the sum of Ten Thousand Dollars ($10,000.00) or so much of my estate as will produce a net income of Five Hundred Dollars ($500.00) per annum, said principal sum to be by them invested and the proceeds to be applied by them for the sole use and benefit of my niece Annie E. Travers, at present a student at the Academy of the Visitation in Georgetown D. C., and when said Annie E. Travers attains the age of Twenty one years, I direct my Executors to pay her the said sum of Five Hundred Dollars ($500.00), per annum, directly and without the intervention of any trustee for and during the term of her natural life, and at her death to pay the principal sum of Ten Thousand Dollars ($10.000.00) to the "Sisters of the Visitation a body corporate in Georgetown, District of Columbia.

Second. All the rest and residue of my estate, of whatever kind and wherever situated, Real or personal, I give devise and bequeath in fee simple in two equal parts, the first part to the five children of my sister Sydney Virginia Mitchell, viz:—Margaret M. Mitchell, Sydney Mitchell, Elizabeth Mitchell, Mary Wallis, and Alice Virginia Rohrer, to be equally divided among them, share and share alike; and the other of said parts I give devise and bequeth to the "Sisters of the Visitation," a body corporate, at Georgetown, in the District of Columbia, absolutely and in fee simple.

368 Third. I nominate, constitute and appoint Martin F. Morris, and George E. Hamilton, of Washington, D. C., to be the Executors of this my Last Will and Testament.

In testimony whereof I have hereunto set my hand and seal this 30th day of December A. D. 1894.

(Signed) ELIZABETH TRAVERS, [SEAL]

Signed, sealed, published and declared by the above named Testatrix Elizabeth Travers, as and for her Last Will and Testament,

in the presence of us, who at her request, and in her presence, and in the presence of each other, have subscribed our names hereto as witnesses.

HELEN H. SQUIRE, Georgetown Convent.
MARY H. COULSON, " "
M. J. COLBERT, 512, F. Street, N. W.

369 EXHIBIT No. 20.
Filed with the Auditor.

In the Supreme Court of the District of Columbia.

TRAVERS ET AL. vs. TRAVERS ET AL. } Equity No. 21484.

It is this 13th day of February, 1903, by and between the parties to this Cause by their solicitors stipulated and agreed as follows:—

The property mentioned in the second paragraph of the will of Nicholas Travers, deceased, as devised to his son Joseph and described as follows:— All that lot or parcel of ground with the improvements and appurtenances known as part of lot numbered Five (5) in Square numbered Two hundred and ninety-one (291), beginning on Pennsylvania Avenue at the corner of Thirteenth Street West and running thence with said Avenue Sixty-seven (67) feet, thence in a line parallel with the Eastern boundary line of lot numbered Five (5) until it strikes the rear of lot numbered Seven (7) in said Square, thence with said lot numbered Seven (7) to the Southeast corner of lot numbered Six (6) in said Square, thence with said lot numbered Six (6) Seventy-five (75) feet to said Thirteenth Street, thence with said Street Seventy-four feet six inches
370 (74′ 6″) to the beginning, is the identical property known as lots Twenty-nine (29), Thirty (30), Thirty-one (31) and Thirty-two (32) in said Square numbered Two hundred and ninety-one (291) of the subdivision made by the Trustees in this Cause, and by them sold; that of the net proceeds of the sales of said lots five-eighths was distributed and three-eighths reserved for further proceedings, as per account "B" of the Auditor's report filed the 5th day of July 1901 and finally ratified.

That lots Twenty-seven (27) and Twenty-eight (28) of said Trustees' subdivision is identical with parts of lots Four (4) and Five (5) in said Square numbered Two hundred and ninety-one (291) devised by the will of Nicholas Travers in the third paragraph thereofand the whole amount of the proceeds of the sale of said lots Twenty-seven (27) and Twenty-eight (28) was distributed, as per account "C" of the Auditor's account filed herewith.

That the property mentioned in the fourth paragraph of the will of said Nicholas Travers devised to his son Jamesd -escribed as part of lot numbered Four (4) and part of lot numbered Three (3) in Square numbered Two hundred and ninety-one (291), beginning on

said Avenue at the East corner of the lot heretofore devised to Nicholas, and running thence with said Avenue to the line of lot numbered Three (3) being Twenty (20) feet, thence with the front line of lot numbered Three (3) Fifty (50) feet, thence in a line parallel to the lines of said lot numbered Three
371 to the rear of lot numbered Nine (9), thence West along said lot numbered Nine (9) and part of lot numbered Eight (8) Seventy (70) feet until you arrive at a point on the rear line of lot numbered Eight (8) from which a line drawn parallel with the lines of lot numbered Three (3) will reach the point of beginning; also the parcel in said Square beginning on "E" Street North at the East corner of lot numbered Eight (8) and running thence along said lot West Twenty-five (25) feet to a three foot alley hereinbefore established in perpetuity between a lot devised to Nicholas and the one now under description, thence with said alley to the rear of lot numbered Four (4), thence East along lot numbered Four (4) and lot numbered Three (3) Twenty-five feet to the East line of the lot, thence along said line to the beginning; also part of lot numbered Nine (9) in said Square, beginning on North "E" Street at the East corner of lot numbered Eight (8), thence East along said Street to a point which shall be established at a distance of Forty-three (43) feet from the East line of a lot hereinbefore devised to Elias Travers composed in part of lots numbered Nine (9) and Ten (10), thence South with the alley to the rear of said lot Nine (9), thence West to the line of lot Eight (8), and thence with the original division line between lots Eight (8) and Nine (9) to the place of beginning, is the same property known as lots Twenty-four (24), Twenty-five (25), Twenty-six (26), Thirty-three (33) and Thirty-four (34) in said Square Two hundred and ninety-one (291), of the subdivision
372 made by the Trustees in this Cause; that lots Twenty-five (25), Twenty-six (26) and Thirty-three (33) of said Subdivision have been sold and one-fourth of the proceeds of the sale thereof distributed and three-fourths thereof reserved for further proceedings, as per account "F" of the Auditor's account filed and ratified; that lots Twenty-four (24) and Thirty-four (34) of said subdivision have not been sold.

E. A. NEWMAN
Solicitor for some of the parties
A. A. BIRNEY—
Solr
C. H. STANLEY.
Solr for those represented by him.
FILLMORE BEALL
Solr
HAMILTON & COLBERT
Solicitors for certain defts.
GORDON & GORDON
Solrs for Sisters of Visitation

373 EXHIBIT No. 21.

Filed with the Auditor.

Copy.

In the Supreme Court of the District of Columbia.
Holding a Special Term for Orphan's Court Business.

IN RE:— ESTATE OF
ELIZABETH TRAVERS, DECEASED.

This Agreement made and entered into this Seventh day of June in the year of our Lord nineteen hundred, by and between George E. Hamilton named as one of the Executors in a paper writing on file herein purporting to be the last will and testament of said Elizabeth Travers late of the District of Columbia, deceased; Maria L. Reinhardt, Margaret M. Mitchell, Sidney Mitchell, Elizabeth Mitchell, Mary L. Wallis and Alice V. Rohrer, The Sisters of The Visitation (of Georgetown), a body corporate, and Annie E. Travers beneficiaries and distributees mentioned in said paper writing, of the first part, and John H. Travers, James W. Travers, Joseph Travers, Kate M. M. Owens, Amelia C. Travers, Charles. E. Travers and Sidney Travers, parties of the second part.

Witnesseth: That the said parties of the first and second parts for and in consideration of the mutual covenants and agreements to be performed and kept each with the other and hereinafter set forth, and further the sum of Ten Dollars in current money of the United States paid by the said parties of the second part to the said parties of the first part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have mutually agreed, and do hereby agree to and with each other in manner and form following, that is to say:

374 First: That the parties of the second part do hereby dismiss and with draw the caveats heretofore filed by them respectively against the probate of the said paper writing purporting to be the last will and testament of the said Elizabeth Travers, deceased, and hereby dismiss and withdraw the issues and all other proceedings growing out of said caveats.

Second: That the parties of the second part being heirs at law and next of kin of said Elizabeth Travers, do hereby agree that said paper writing of said Elizabeth Travers, deceased, may be admitted to probate and record as and for her last will and testament, both as to realty and personalty, and that letters testamentary may be granted unto George E. Hamilton upon his giving bond approved by the Court as the sole Executor of said will, the other executor therein named, Martin F. Morris, having renounced.

Third: That one undivided sixth (1-6) right, title and interest in and to all the estate, real, personal and mixed passing under the

said last will and testament of said Elizabeth Travers, deceased, or of which she died seized and possessed, be and the same is hereby vested in the said parties of the second part as tenants in common in equal shares, their heirs, executors, administrators and assigns, with the exception that Amelia C. Travers takes the part of Charles E. Travers as his assignee and alienee. That the remaining five sixths (5-6) of said estate shall be distributed and disposed of according to the terms and provisions of said last will and testament of Elizabeth Travers, deceased, and that the title to said estate as vested in pursuance of this Agreement in the said parties respectively, shall be with the Court's permission incorporated in and made part of the decree of the Court admitting the said will to probate and record.

Fourth: That there shall be a sale of all the real estate of
375 which the said testatrix died siezed and possessed or which passed under her said will within a reasonable time and George E. Hamilton, J. Holdsworth Gordon, Charles H. Stanley and Edward A. Newman shall be appointed Trustees with the Court's approval to make such sale.

In testimony Whereof, the said parties by their respective Counsel have hereunto set their hands at the City of Washington in the District of Columbia on the day and year first hereinbefore mentioned.

GEORGE E. HAMILTON
Executor and Trustee.
HAMILTON & COLBERT
for Mitchell heirs, Annie Travers & Mrs. Reinhardt being all parties of the 1st part except Sisters of Visitation.
C. H. STANLEY
EDWARD A. NEWMAN
FIL-MORE BEALL
Solicitors for Caveators & Parties of the Secod Part.
GORDON & GORDON
Attys. Sisters of Visitation.

376 EXHIBIT No. 22.

Filed with the Auditor.

WASHINGTON, D. C., *January 30, 1903.*

Messrs. Hamilton & Colbert, to J. Arthur Lynham, Examiner in Chancery.....Dr.

To services as Examiner in taking the testimony for the defendants in the case of Travers *v.* Travers, Equity 21,484, as follows:

Sept. 15, 1902.	To meeting and adjourning.....		
" 25, "	" " " "		$2.50
Oct. 4, "	To one session; 90 folios at 25c.....		22.50
Dec. 1, "	To meeting and adjourning.....		
Jan. 16 and 17, 1903.	To services in going to Philadelphia, Pa., and obtaining Mrs. O'Brien's attendance at 712 Walnut street, and taking her deposition at that time, pursuant to commission issued to me by Supreme Ct. D. C.		25.00
Jan. 19, 1903.	To one session.....		5.00
" 28, "	" " "		5.00
	To carbon copy of depositions.....		10.55
	Total.....		$70.55
	Nov. 25, 1902, by check.....	$25.00	
	Jan. 20, 1903, " "	25.00	50.00
	Balance due.....		$20.55

Received payment,

J. ARTHUR LYNHAM
Examiner.

377 EXHIBIT No. 23.

Before Auditor.

WASHINGTON D. C. *April 27th. 1900.*

Messrs. E. A. NEWMAN, FILLMORE BEALL & CHARLES H. STANLEY, representing heirs of Elias Travers, dec'd.

Gentlemen:—With the approval of Messrs. Hamilton & Colbert, and as representing temporarily all the branches of the Travers family except those represented by you, we submit to your consideration a plan by which all differences in regard to the property devised by the will of Nicholas Travers Sr. may be adjusted in one suit.

In the proceedings now pending (Equity 21316) the ninth paragraph of the bill sets forth that the heirs of Elias, the Mitchells, Mrs. Reinhardt and the estate of Elizabeth, hold in fee "as tenants in common according to their several rights, titles and interests" certain property. Although the extent of the "several rights, titles and interests" are not disclosed, we understand it is agreed that all the property mentioned in the Bill with the exception of the west 67 feet front on Penn. ave. of lot 5 in square 291 is held in equal interests by the several branches of the Travers family, and that as to said 67 feet the heirs of Elias claim an undivided half under the provisions of the will of Nicholas Travers as survivor of Joseph Travers, as also an additional one-eighth as heir of James.

In Equity 21316 none of the property of James held under his

father's will is included, as was the case in the original proceeding Equity 20426. We understand that this property, east 24 ft. 2 inches of lot 4, west 50 ft, of lot 3, east half lot 8, and west 34 ft, 1 in. of lot 9, all in square 291, is claimed by the heirs of Elias under the will of Nicholas Travers as survivors of James Travers.

As the Mitchells, Mrs. Reinhardt and the estate of Elizabeth Travers claim an equal interest in the west 67 feet of lot 5 in square 291, and in the lots in said square devised to James by his father; and as the prosecution of the present proceedings would fail to settle the differences between the various parties in regard to said property: we suggest that it would be eminently proper to combine all matters in controversy in one cause, and save time, labor and expense.

It is therefore suggested in behalf of the Mitchells, Mrs. Reinhardt and the estate of Elizabeth Travers, that Equity 21316 be dismissed and a new proceeding instituted setting forth:

378 The will of Nicholas Travers Sr. so far as devises to his son- Nicholas, Joseph and James are concerned; the disposition made of the lots devised to said sons in squares 291 and 379: the claim of heirs of Elias under the will as survivors of Joseph as to west 67 feet of lot 5, and as survivors of James as to the other lots in square 291: the adverse claim of other heirs casting cloud on title and leading to litigation: the will of Elizabeth Travers and caveat thereto: and praying for a full adjustment of the interests of the respective parties in the various properties. In the meantime permitting the contest over the will of Elizabeth to remain in abeyance to be tried or compromised after the decision in the proposed Equity Cause.

Should this course be adopted all matters in controversy would be adjusted, the titles settled and matters finally disposed of.

Kindly give the within consideration and notify us as to your conclusions.

Yours truly, GORDON & GORDON

379 *Bill of Complaint.*

Filed Apr. 5, 1900.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, AND CHARLES E. TRAVERS, Complainants.
vs.
JOHN H. TRAVERS, KATE M. TRAVERS, JOSEPH TRAVers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation", a body corporate, Defendants.

Equity No. 21,316 Docket 48

To the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

The complainants complain and show unto the Court as follows:

First: That the complainants are wife and husband, citizens of the United States, residents of the District of Columbia and sue as follows; the said Amelia in her own right and with reference
380 to her sole and separate property, and the said Charles as the husband of the said Amelia.

Second: That the defendants, John H. Travers and Kate Travers are citizens of the United States and residents of Baltimore and State of Maryland; that the defendants Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers and Kate M. M. Owens are citizens of the United States and residents of Laurel in the State of Maryland; that the defendants Mary L. Wallis and Samuel Wallis are citizens of the United States and residents of said District or of Roanoke in the State of Virginia; that the defendants Alice V. Rohrer and William H. Rohrer are citizens of the United States and residents of Altoona and State of Pennsylvania; that the defendants Sidney Mitchell and Annie Mitchell are citizens of the United States and residents of Minneapolis in the State of Minnesota; that the defendant Annie E. Travers is a citizen of the United States and a resident of Philadelphia, in the State of Pennsylvania; that the defendants Sidney Travers, Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell and Elizabeth Mitchell are citizens of the United States and residents of the District of Columbia, which is also the habitat of the defendant Corporation.

Third: That the defendant Kate M. Travers is the wife of the said John H. Travers; the said Mary E. Travers is the wife of the said Joseph Travers, the said Mabel Travers is the wife of said

James W. Travers, the said Louis F. Reinhardt is the husband of the said Maria L. Reinhardt, the said Samuel Wallis is the husband of the said Mary L. Wallis the said William H. Rohrer is the husband of the said Alice V. Rohrer, and the said Annie Mitchell
381 is the wife of the said Sidney Mitchell, and said parties are sued herein as the said wives and husbands respectively.

Fourth: That the said defendants, John H. Travers, Joseph Travers, James W. Travers, Sidney Travers, Kate M. M. Owens and the complainant Charles E. Travers are the children and only heirs-at-law of Elias Travers, late of Prince George County in the State of Maryland, deceased, who was a brother of Joseph Travers, late of St. Mary's County in the State of Maryland, deceased, and of James Travers late of Point Pleasant in the State of New Jersey, deceased; that the defendant Maria L. Reinhardt is the daughter and only heir-at-law of Mary Wynne, deceased, who was a sister of the said Joseph Travers, deceased; that the defendants Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer and Sidney Mitchell are the children and only heirs-at-law of Sydney Virginia Mitchell, deceased, who was another sister of the said Joseph Travers, deceased, and all the defendants hereinbefore named in this paragraph are sued in their own right in reference to their sole and separate property, and also as heirs-at-law as hereinafter shown.

Fifth: That the defendants Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis and Alice V. Rohrer are also sued as devisees and beneficiaries under a paper-writing hereinafter referred to purporting to be the last will and testament of Elizabeth Travers, deceased, another sister of the said Joseph Travers, deceased; and the defendant Annie Travers is sued in her own right and as legatee and beneficiary under said paper-writing; that the defendant
382 "The Sisters of the Visitation" is a body corporate and is sued as devisee and beneficiary in the said paper-writing.

Sixth: That the said Joseph Travers late of St. Mary's County in the State of Maryland, deceased, departed this life intestate, to wit, the 12th day of September, 1882, leaving a widow Mary Travers who has since deceased, but no children or descendants of any child or children, and at the time of his death his said brother- Elias and James and his said sisters Sydney Virginia Mitchell, Mary Wynne and Elizabeth Travers, all since deceased, constituted his only heirs at law.

Seventh: That the said James Travers late of Point Pleasant in the State of New Jersey departed this life to wit, the
day of October 1883, without widow or lawful child or children or the descendants of any child or children surviving him, and leaving a paper-writing purporting to be his last will and testament a copy of which is duly recorded in the Office of the Register of Wills of said District in Will Book 21 folio 162, and which said alleged last will and testament contains the following devise, to wit.

"Item: My just debts and funeral expenses being first paid, I hereby give, devise and bequeath in manner following, that is to say:

First: To my brothers and sisters all my interest and property however held in the City of Washington, District of Columbia."

That the brother and sisters of the said James Travers, deceased, who survived him were the said Elias, and the said Sydney
282½ Virginia Mitchell, Mary Wynne and Elizabeth Travers, and at the time of his death these persons constituted his sole heirs at law.

Eighth: That the said Elias Travers departed this life intestate, to wit, the 29th day of April 1887; that the said Mary Wynne departed this life intestate, to wit, the 7th day of February 1892; that the said Sydney Virginia Mitchell departed this life intestate the 17th day of August 1895. That the said Elizabeth Travers departed this life on the 14th day of October, 1897, leaving a paper-writing purporting to be her last will and testament dated the 30th day of December 1894, which has been filed with the Register of Wills for said District and offered for probate in the said Supreme Court of said District of Columbia holding a special term for Orphans' Court business wherein the said defendants, Annie Travers, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer and Sidney Mitchell and said Sisters of the Visitation a body corporate, are mentioned as the sole legatees, devisees and beneficiaries. That the said Children of Elias Travers, deceased, have filed a caveat to said alleged will, and issues thereon are now pending before said Court.

Ninth: That with the exception of the interest which belonged to the said Elizabeth Travers, deceased, in the hereinafter described real estate, the complainant Amelia C. Travers, and the defendants, John H. Travers, James W. Travers, Joseph Travers, Sidney Travers, Kate M. M. Owens, Maria L. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer and Sidney Mitchell own, possess and hold in fee simple as tenants in
383 common according to their several rights, titles and interests, the following described real estate situate in the District of Columbia and which was held and possessed by the said Joseph Travers, deceased, at the time of his death, to wit:

All of original Lot numbered five (5) in Square numbered two hundred and ninety-one (291).

The West thirty (30) feet and ten (10) inches by the full depth thereof of original Lot numbered Four (4) in Square numbered two hundred and ninety-one (291).

The East half (E. ½) of original Lot numbered Five (5) in Square numbered three hundred and seventy-nine (379).

All of original Lot numbered Seventeen (17) in Square numbered thirty-three (33).

All of original Lot numbered Five (5) in Square numbered six hundred and fifty-two (652).

Parts of Lots numbered thirteen (13) and ninety-two (92) in Square numbered Twelve hundred and seven (1207). Beginning for said parts of Lots on Bridge (now "M") Street one hundred and sixty-two (162) feet West from the Southeast corner of said Square and running thence North one hundred and twenty-nine (129) feet to the North line of said Lot numbered ninety-two (92), thence West forty-two (42) feet seven (7) inches, thence South sixty (60) feet to the line of Lot belonging to the Estate of George Hill, Jr., thence East seventeen (17) feet nine (9) inches; thence South sixty-nine (69) feet to the line of said Bridge (now "M") Street; thence East along said Street twenty-five (25) feet to the said place of beginning.

384 An undivided one-half (½) right, title and interest in and to the following described real estate, situate lying and being in the City of Washington and District of Columbia and known and distinguished as and being the Westerly twenty three (23) feet six (6) inches of original Lot numbered three (3) in Square West of Square numbered four hundred and eighty-four (West of 484), fronting twenty-three (23) feet and six (6) inches on Massachusetts Avenue and with that width running through to and fronting on North "K" Street twenty-three (23) feet and six (6) inches.

9½ That the interest therein formerly owned by the said Elizabeth Travers, deceased, is claimed by the said five last named defendants who are the children of said Sydney Virginia Mitchell, deceased, and by the defendant Annie Travers who is not related to said Elizabeth, and by the defendant "The Sisters of the Visitation", a body corporate, all of whom are named as the sole beneficiaries and devisees in her said alleged will. In case her said alleged will should be annulled and set aside, the said interest of the said Elizabeth would pass to her heirs-at-law, all of whom are parties to this suit, to wit, the children of Elias Travers, deceased, substituting the complainant Amelia for her husband Charles E. as said alienee; the children of Sydney Virginia Mitchell, and the child of Mary Wynne, as hereinbefore shown. In the event said alleged will is sustained and probated the said devisees and beneficiaries thereunder who are parties defendant as aforesaid, would become tenants in common therein with the complainant Amelia and the other parties to this suit whose interests are hereinbefore set forth.

Tenth: That the complainant as the alienee of her said
385 husband is seised and possessed in fee simple in her own right, as her sole and separate property including the rents thereof, of all the right, title and interest of her said husband as one of the children and heirs-at-law of said Elias Travers, deceased, and as one of the heirs-at-law of said Joseph Travers, deceased, in and to said described real estate, and if the caveat to said will of

said Elizabeth Travers, deceased, be sustained her interest in said real estate will be materially increased.

Eleventh: That all the natural persons to this suit are adults.

Twelfth: That the said land and premises are not susceptible of partition in kind among the parties interested therein, without loss and injury, and the complainants are advised and believe and so aver, that they are entitled to have the same sold under the direction of this Honorable Court and the proceeds of such sale or sales distributed among the parties concerned according to their respective rights and interests as the same may appear—the complainants and defendants being seised as tenants in common of the said lands and premises according to their respective rights, titles and interests.

Prayer.

The complainants therefore pray as follows:

1st. That said real estate and premises may be sold by Trustees under the direction of the Court and to be appointed for that purpose, and that the proceeds of such sale less proper allowances be distributed among the said parties according to their respective rights and interests.

386 2nd. That an order of publication in the usual form be passed requiring the appearance of said non-resident defendants.

3rd. That all necessary accounts may be taken, inquiries made and directions given.

4th. That complainants may have such further or other relief in the premises as the nature of the case may require.

5th. To which end the complainants pray for process against the defendants, John H. Travers, Kate M. Travers, Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Anhie Mitchell, Annie E. Travers and "The Sisters of the Visitation" a body corporate, requiring them and each of them to appear and answer the exigency of this Bill.

The defendants to this Bill of Complaint are: John H. Travers, Kate M. Travers, Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers and "The Sisters of the Visitation," a body corporate.

AMELIA C. TRAVERS
CHARLES E. TRAVERS

EDWARD A. NEWMAN
Solicitor for Complainants.

387 DISTRICT OF COLUMBIA, *ss:*

We Amelia C. Travers and Charles E. Travers do solemnly swear that we have read the foregoing Bill by us subscribed and know the contents thereof and that the facts therein stated upon our personal knowledge are true and that the facts therein stated upon information and belief we verily believe to be true.

AMELIA C. TRAVERS
CHARLES E. TRAVERS

Subscribed and Sworn to before me this Fifth day of April, 1900.
[SEAL.] J. WM. REILY
Notary Public, D. C.

388 *Answer of Certain of the Defendants, Being Nos. 1 to 7 and 9.*

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS AND CHARLES E. TRAVERS, Complainants,
vs
JOHN H. TRAVERS, KATE M. TRAVERS, JOSEPH Travers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. Owens, Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Micthell, Annie Mitchell, Annie E. Travers, and the Sisters of the Visitation, a body corporate. } Equity No.

To the Supreme Court of the District of Columbia holding an Equity Court.

The answer of the defendants John H. Travers, Kate M. Travers, Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers and Kate M. M. Owens.

These defendants hereby expressly waive service of process and order of publication, and submit themselves to the jurisdiction of this Honorable Court, & for answer to the bill of complainant against them exhibited in this cause, or to so much thereof as they are advised it is material for them to make answer to, say:

1st. these defendants admit the allegations contained in the
389 several paragraphs of the bill numbered from one (1) to twelve (12) inclusive, and consent to the passage of a decree for the sale of the real estate mentioned and described in said bill as therein prayed and that the proceeds of such sale may be distributed among the parties to this cause according to their rights and interests as may be shown.

2nd. These defendants for further answer to said bill of complaintant say: That in a bill filed by the complainants in this cause against the defendants herein in this Honorable Court, the same being Equity Cause No. 20.426, these defendants in an answer filed thereto, not being then fully advised of their rights in the premises, admitted or did not deny certain allegations in the bill as to the interest of these defendants and other parties to said cause to certain portions of the real estate therein described, (the real estate described in this bill being a part thereof) which said admissions and statement these defendants now hereby disavow, disclaim and annul so far as the same are inconsistent with the averments contained in the bill in this cause, and the statements contained in the first paragraph of this answer; and further disavow, disclaim and annul any admission or seeming admission as to any other real estate not in this bill included and any interest therein of any of the parties to the cause other than the heirs of Elias Travers, deceased, and any and all admissions inconsistent with this bill and the answer.

JOHN H. TRAVERS,
KATE M. TRAVERS,
JOSEPH TRAVERS,
MARY E TRAVERS,
JAMES W TRAVERS
MABEL TRAVERS,
SIDNEY TRAVERS
KATE M OWENS
by C H STANLEY &
FILLMORE BEALL *their Solicitors*

Oath waived
E A NEWMAN
Solr for Complts.

390 (*Order dismissing Cause 21316 O. B. 17. 356.*)

AMELIA C. TRAVERS ET VIR
vs.
JOHN H. TRAVERS ET AL. } 21316 Eq.

The Clerk will enter this cause discontinued
EDWARD A. NEWMAN
Solr. for Complt.
June 8, 1900.

Discontinuance as ordered
1900—6–8. By Clk.

391 *Bill.*

Filed May 8, 1899.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS AND CHARLES E. TRAVERS, Complainants.
vs.
JOHN H. TRAVERS, KATE M. TRAVERS, JOSEPH TRAVERS, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, John W. Owens, Maria L. Wynne, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis Alice V. Rohrer, Sidney Mitchell, Annie Mitchell Annie E. Travers, and "The Sisters of the Visitation" a body corporate. and William H. Rohrer Defendants.

No. 20426 Equity Doc 46

To the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

The Complainants complain and show unto the Court as follows:

First: That the Complainants are wife and husband, citizens of the United States; residents of the District of Columbia and sue as follows; the said Amelia in her own right and with reference to her sole and separate property, and the said Charles as the husband of the said Amelia:—

392 2. That the defendants John H. Travers, Kate Travers, Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers Kate M. M. Owens and John W. Owens are Citizens of the United States and residents of Laurel in the State of Maryland; that the defendants Mary L. Wallis and Samuel Wallis are citizens of the United States and residents of Roanoke, in the State of Virginia; that the defendants Alice V. Rohrer and William H. Rohrer are citizens of the United States and residents of Altoona, and State of Pennsylvania; that the defendants Sidney Mitchell and Annie Mitchell are citizens of the United States and residents of Minneapolis, in the State of Minnesota; that the defendants Sidney Travers, Maria L. Wynne, Margaret M. Mitchell and Annie E. Travers are citizens of the United States and residents of the District of Columbia, which is also the habitat of the defendant Corporation.

3. That the defendant Kate M. Travers is the wife of the said John H. Travers; the said Mary E. Travers, is the wife of the said Joseph Travers. the said Mabel Travers is the wife of the said James W. Travers, the said John W. Owens is the husband of the said Kate M. M. Owens; the said Annie Mitchell is the wife of the said Sidney Mitchell, the said Samuel Wallis is the husband of the said Mary L. Wallis and the said William H. Rohrer is the husband of

the said Alice V. Rohrer and said parties are sued herein as the said wives and husbands respectively.

4. That the said defendants John H. Travers, Joseph Travers, James W. Travers, Sidney Travers, Kate M. M. Owens and the complainant Charles E. Travers are the children and only heirs at-law of Elias Travers, deceased, who was a brother of Joseph and James Travers, late of the District of Columbia, deceased; that the defendant Maria L. Wynne is the daughter and only heir at-law of Mary Wynne, deceased, who was a sister of the said Joseph and
393 James Travers, deceased; that the defendants Margaret M. Mitchell, Elizabeth Mitchell Mary L. Wallis, Alice V. Rohrer and Sidney Mitchell are the children and only heirs at-law of Sydney Virginia Mitchell, deceased who was another sister of the said Joseph and James Travers, deceased, and all the defendants hereinbefore named in this paragraph are sued in their own right in reference to their sole and separate property, and also as heirs at-law as herein shown.

5. That the defendant Annie E. Travers is sued in her own right and as legatee and beneficiary under a paper writing purporting to be the last will and testament of Elizabeth Travers, deceased hereinafter referred to, and the defendant "The Sisters of the Visitation" is a body corporate and is sued as beneficiary and devisee under said last mentioned paper writing; that said Elizabeth deceased was also a sister of the said Joseph and James Travers deceased.

6. That said James Travers deceased departed this life testate on or about the day of October 1883 at Point Pleasant in the State of New Jersey, and an exemplified copy of his last will and testament is of record in the office of the Register of Wills of said District in Will Book 21, folio 162 and which said last will and testament contains the following devise to-wit:

"Item. My just debts and funeral expenses being first paid, I hereby give, devise and bequeath in manner following that is to say:

First. To my brothers and sisters all my interest and property however held in the City of Washington, District of Columbia."

394 7. That the brothers and sisters of said James who were living at his death and who took under said will are as follows: Joseph Travers, Elias Travers, Elizabeth Travers, Mary Wynne and Sydney Virginia Mitchell, all of whom have since died intestate except the said Elizabeth who left a paper writing purporting to be her last will and testament dated the 30th. day of December 1894 which has been offered for probate in the said Supreme Court holding an Orphans Court for said District wherein the said defendant Annie E. Travers and the said defendant corporation "The Sisters of the Visitation" and the said defendants Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer,

and Sidney Mitchell, are the sole legatees, devisees and beneficiaries; a copy of said will of said Elizabeth being herewith filed marked "Exhibit A." and made part hereof; that the said Joseph Travers brother of James deceased died about the year 1885; that said Elias Travers died the 30th day of April 1887; that the said Sydney Virginia Mitchell died the 17th. day of August 1895; that the said Mary Wynne died the 7th. day of February 1892 and the said Elizabeth Travers died the 14th. day of October 1897.

8. That the real estate in the City of Washington and District of Columbia which was devised to the said brothers and sisters, all now deceased, of the said James Travers, deceased, in and by said will as aforesaid and of which he died seized and possessed is described as follows, to-wit:—

The West fifty (50) feet front by the depth thereof, of original lot numbered three (3) in square numbered two hundred and ninety-one (291). The East twenty-five (25) feet one (1) inch front by the depth thereof of original lot numbered four (4) in square
395 numbered two hundred and ninety-one (291).

The East half (E. ½) of original lot numbered Eight (8) in Square numbered two hundred and ninety-one (291).

The West Thirty-four (34) feet one (1) inch front of original lot numbered nine (9) in Square numbered two hundred and ninety-one (291).

8. That the said Joseph Travers, deceased, at the time of his death as aforesaid was seized and possessed of the following described real estate situate in the City of Washington and District of Columbia, to wit:—

All of Original lot numbered seventeen (17) in Square numbered thirty-three (33).

The West twenty-nine (29) feet and eleven (11) inches front by the depth thereof, of lot numbered four (4) in Square numbered two hundred and ninety-one (291).

All of original lot numbered five (5) in Square numbered two hundred and ninety-one (291).

The East half (E. ½) of original lot numbered five (5) in Square numbered three hundred and seventy-nine (379.)

All of original lot numbered five (5) in Square numbered six hundred and fifty-two (652).

Parts of lots numbered thirteen (13) and ninety-two (92) in Square numbered twelve hundred and seven (1207); Beginning for said parts of lots on Bridge (now "M") Street one hundred and sixty-two (162) feet West from the South East of said Square and running thence North one hundred and twenty-nine (129) feet to the North line of said lot numbered ninety-two (92), thence West forty-
two (42) feet seven (7) inches, thence South sixty (60) feet to
396 the line of the lot belonging to the estate of George Hill, Jr., thence East Seventeen (17) feet nine (9) inches; thence South sixty-nine (69) feet to the line of said Bridge (now "M") Street;

thence East along said street twenty-five (25) feet to the said place of beginning:

9. That the Complainant Amelia C. Travers is the owner in fee simple, in her own right, as her sole and separate property, of all the right, title and interest of her said husband as one of the children and heirs at-law of said Elias Travers, deceased and as one of the heirs at-law of his said Uncles James and Joseph Travers deceased, in and to said real estate, such right, title and interest being the one undivided twenty-fourth interest in the real estate and premises hereinbefore described, liable to be increased to one undivided Eighteenth by a favorable decision of the Court on the Caveat filed against the said alleged Will of the said Elizabeth Travers, deceased; and the title of said Amelia thereto is claimed by her under and virtue of certain deeds of conveyance duly recorded among the Land Records of the District of Columbia, and the said Amelia is possessed of her said interest in said described real estate, receiving her share of the rents and profits derived therefrom.

10. That the remaining right, title and interest in and to said described real estate and premises with the exception of that which belonged to the said Elizabeth Travers, deceased are held and owned in fee simple, as tenants in common with the Complainant Amelia C. Travers, by the defendants John H. Travers, Joseph Travers, James W. Travers, Sidney Travers, Kate M. M. Owens, Maria L. Wynne, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Alice V. Rohrer and Sidney Mitchell, and the interest represented and devised
397 by the alleged Will of the said Elizabeth Travers deceased is claimed by the said five last named defendants, the defendant Annie E. Travers and the defendant "The Sisters of the Visitation" a corporation. In case the said will should be annulled and set aside the said interest of the said Elizabeth would pass to her heirs at-law, all of whom are parties to this suit as hereinbefore shown, and in the event that the same be sustained the said beneficiaries and devisees thereunder who are parties defendant as aforesaid would be tenants in common with the Complainant Amelia and the other parties to this suit whose interests are hereinbefore set forth.

11. That all the natural persons to this suit are adults.

12. That the said land and premises are not susceptible of partition in kind among the parties interested therein, without loss and injury, and the Complainants are advised and believe and so aver, that they are entitled to have the same sold under the direction of this Honorable Court and the proceeds of such sale or sales distributed among the parties concerned according to their respective rights and interests.

Prayer.

The Complainants therefore pray as follows:—

1st. That said real estate and premises may be sold by Trustees under the direction of the Court and to be appointed for that purpose; and that the proceeds of such sale, less proper allowances, be distributed among the said parties according to their respective rights and interests.

398 2nd. That an order of publication in the usual form be passed requiring the appearance of said non-resident defendants.

3rd. That all necessary accounts may be taken, inquiries made and directions given.

4th. That Complainants may have such further or other relief in the premises as the nature of the case may require.

5th. To which end the Complainant prays for process against the defendants John H. Travers, Kate M. Travers, Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, John W. Owens, Maria L. Wynne, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis Alice V. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers and "The Sisters of the Visitation" a body corporate, and William H. Rohrer requiring them and each of them to appear and answer the exigency of this bill.

The Defendants to this bill of complaint are:—John H. Travers, Kate M. Travers, Joseph Travers, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, John W. Owens, Maria L. Wynne, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis Alice V. Rohrer, Sidney Mitchell, Annie Mitchell Annie E. Travers and "The Sisters of the Visitation," a body corporate. and William H. Rohrer.

EDWARD A. NEWMAN
Solr. for Complainants.

AMELIA C. TRAVERS
CHARLES E. TRAVERS

399 DISTRICT OF COLUMBIA: } *ss:*

We Amelia C. Travers and Charles E. Travers do solemnly swear that we have read the foregoing bill by us subscribed and know the contents thereof and that the facts therein stated upon our personal knowledge are true and that the facts therein stated upon information and belief we verily believe to be true.

AMELIA C. TRAVERS
CHARLES E. TRAVERS

Subscribed and sworn to before me this Eighth day of May 1899.

[SEAL] J. WM. REILY
Notary Public, D. C.

400 EXHIBIT A. TO COMPLAINANTS' BILL

Filed May 8, 1899.

In the name of God Amen:

I, Elizabeth Travers, known in religion by the name of Sister Mary Agatha, now of Georgetown, in the District of Columbia, being of sound and disposing mind and understanding do make publish and declare this to be my last will and testament hereby revoking all former wills by me at any time made, and I dispose of my estate as follows:

First. I give devise and bequeath to my executors here in after named the sum of $10,000. or so much of my estate as will produce a net income of Five Hundred (500) Dollars per annum, said principal sum to be by them invested and the proceeds to be applied by them for the sole use and benefit of my Niece, Annie E. Travers, at present a student at the Academy of the Visitation in Georgetown, District of Columbia, and when said Annie E. Travers attains the age of twenty-one years, I direct my said Executors to pay her the said sum of Five Hundred (500) Dollars per annum directly and without the intervention of any trustee for and during the term of her material life, and at her death to pay the principal sum of $10,000. to the Sisters of the Visitation a body corporate in Georgetown, District of Columbia.

Second. All the rest and residue of my estate of whatever kind and wheresoever situated real or personal, I give devise and bequeath in fee simple in two equal parts, the first part to the five children of my sister Sidney Virginia Mitchell viz: Margaret M. Mitchell, Sydney Mitchell, Elizabeth Mitchell, Mary Wallis and Alice Virginia Rohrer to be equally divided among them share and share alike, and the other of said parts I give devise and bequeath
401 to "The Sisters of the Visitation" a body corporate at Georgetown in the District of Columbia absolutely and in fee simple.

Third. I nominate constitute and appoint Martin F. Morris and George E. Hamilton of Washington, District of Columbia to be the Executors of this my last will and testament.

In testimony whereof I have hereunto set my hand and seal this 30th day of December A. D. 1894.

ELIZABETH TRAVERS. [SEAL]

Signed, sealed published and declared by the above named testatrix, Elizabeth Travers, as and for her last will and testament in the presence of us, who at her request and in her presence, and in the presence of each other, have subscribed our names hereto as witnesses.

HELEN H. SQUIRE Georgetown Convent
MARY H. COULSON " "
M. J. COLBERT 512 F Street

402 *Answer of Defendants John H., Kate M., Joseph, Mary E., James W., Mabel and Sidney Travers and Kate M. M. Owens.*

Filed June 15, 1899.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS AND CHARLES E. TRAVERS, Complainants,
vs
JOHN H. TRAVERS, KATE M. TRAVERS, JOSEPH TRAVERS, Mary E. Travers, James W. Travers, Mabel Travers, Sidney Travers, Kate M. M. Owens, John W. Owens, Maria L. Wynne, Margaret M. Mitchell, Elizabeth M. Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers and "The Sisters of the Visitation," a body corporate and William H. Roher, Defendants

No. 20426 Equity.

To the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

The answer of John H. Travers and Kate M. Travers, his wife, Joseph Travers and Mary E. Travers, his wife, James W. Travers and Mabel Travers, his wife, Sidney Travers and Kate M. M. Owens (the said John W. Owens, husband of the said Kate having died since the institution of this suit) to the Bill of Complaint against them and others exhibited, hereby waiving service of process and order of publication in this cause and submitting to the jurisdiction of the Court.

1. These Defendants admit the allegations contained in the first, second, third and fourth paragraphs of the Bill to the extent that they believe the allegations therein contained to be true; but they also believe the facts alleged in the fifth paragraph are true, but they say that they do not admit for the purpose of this case or for any other purpose that the paper writing purporting to be the last will and testament of Elizabeth Travers is her last will and
403 testament, but the question as to whether said paper writing is or is not the last will and testament of Elizabeth Travers is now in controversy in this Hon Court in Special term for probate jurisdiction.

2. The defendants also admit the matters alleged in the sixth, seventh, eighth and ninth paragraphs of said Bill, believing the Complainant, Amelia C. Travers to be the owner in fee simple of the original interest of Charles E. Travers; but have no positive knowledge on the subject; they believe the property involved is properly set forth in the eighth paragraph of the Bill and they say that these Defendants are entitled to five undivided twenty-fourths

interest in the real estate in the premises mentioned liable to be increased to five undivided eighteenths by a favorable decision of the Court on the Caveat filed against the said alleged will of the said Elizabeth Travers.

3. They believe the allegations contained in the eleventh paragraph and that the said land and premises are not susceptible to partition in kind among the parties interested therein and that the said property should be sold by a decree of this Honorable Court and the proceeds divided among the parties according to their respective rights and interest and ask that their rights as owners, as aforesaid, be protected by this Honorable Court in the sale of the property and in the distribution of the proceeds.

And as in duty bound, etc.

JOHN H. TRAVERS
KATE TRAVERS
JOSEPH TRAVERS
MARY E. TRAVERS,
JAMES W. TRAVERS
MABEL TRAVERS
SID. TRAVERS
KATIE M. M. OWENS.
FILLMORE BEALL
C. H. STANLEY
Solicitors.

Oath waived
EDWARD A. NEWMAN
Solr. for Complts

404 *Answer Defendant, Sisters of the Visitation of Georgetown, D. C.*

Filed Aug. 5, 1899.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL.
vs
JOHN B. TRAVERS ET AL. } Equity No: 20.426.

Answer of the defendant, The "Sisters of the Visitation" of Georgetown, in the District of Columbia, to the bill of complaint.

1 This defendant admits the allegations of the first paragraph of the bill.

2–3. The allegations of the second and third paragraphs of the bill are believed to be true, and this defendant admits the same.

4 While this defendant believes the allegations as to the relationship of the various parties mentioned are correctly made, it can not admit the same, not being fully informed thereupon.

5 This defendant admits that it is a body corporate under the

name "The Sisters of the Visitation" of Georgetown, in the District of Columbia.

6–7. This defendant admits the allegations of the sixth and seventh paragraphs of the bill.

8 This defendant believes that the property of which said James Travers & Joseph Travers died seized and possessed, is properly set forth in the eighth paragraph of the bill.

9 The allegations of the ninth paragraph of the bill are neither admitted nor denied, but are believed to be true.

10–11 This defendant admits the allegations of the tenth and eleventh paragraphs of the bill.

405 12 This defendant believes that the allegations of the twelfth paragraph of the bill are true, and has no objection to the granting of the prayers of the bill, so far as its interest as beneficiary under the will of the said Elizabeth Travers is concerned.

GORDON & GORDON

Solicitors for the defendant "The Sisters of the Visitation" of Georgetown, in the District of Columbia.

Oath waived.

EDWARD A. NEWMAN

Sol'r for Complts

406 *Answers of Defendants Maria L. Wynne et al. to Bill of Complaint.*

Filed Sept. 18, 1899.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS, ET AL.,
vs.
JOHN H. TRAVERS, ET AL. } Equity No. 20,426.

For answer to the bill of complaint filed in the above-entitled cause, the defendants Maria L. Wynne, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, Wm H Rohrer Sidney Mitchell, Annie Mitchell, Annie E. Travers, respectfully state as follows:

1st. They admit the matters and things stated in the first paragraph of the bill.

2nd. They admit the matters and things stated in the second paragraph of the bill.

3rd. They admit the matters and things stated in the third paragraph of the bill.

4th. They admit the matters and things stated in the fourth paragraph of the bill.

5th. They admit the matters and things stated in the fifth paragraph of the bill.

6th. They admit the matters and things stated in the sixth paragraph of the bill.

7th. They admit the matters and things stated in the seventh paragraph of the bill.

8th. These defendants believe that the property of which James Travers and Joseph Travers died seized is correctly set forth in the eighth paragraph of the bill of complaint, but for greater
407 certainty they pray leave to refer to the record for more accurate information in regard thereto.

9th. These defendants believe that the matters and things set forth in the ninth paragraph of the bill are true, but having no accurate information in regard thereto they call for proof thereof.

10th. These defendants admit the matters and things stated in the tenth paragraph of the bill of complaint.

11th. They believe that the matters and things stated in the eleventh paragraph of the bill of complaint are true.

12th. These defendants deny the matters and things stated in the twelfth paragraph of the bill of complaint, and say that it is possible and practicable to divide the real estate described in the bill of complaint in kind, and to allot to the complainants, or to the complainant Amelia C. Travers, her interest in the real estate described in the bill in kind, and these defendants say that such partition in kind can be had without loss or injury to any of the parties in interest.

And having fully answered the bill of complaint these defendants pray to be hence dismissed with costs.

HAMILTON & COLBERT,
Solicitors for defendants.

Oath and personal signature waived.

EDWARD A. NEWMAN
Solicitors for complainants.

408 *Order for Dismissal of Suit.*

Filed Mar. 27, 1900

In the Supreme Court of the District of Columbia,
the 27th day of March, 1900

AMELIA C. TRAVERS ET VIR
vs.
JOHN H. TRAVERS ET AL
} Equity No. 20,426
Docket No. 46

The Clerk of said Court will enter this suit "dismissed"

EDWARD A. NEWMAN
Complts'—Solicitor.

409 *Exceptions of Amelia C. Travers et al. to the Auditor's Report, Filed July 17, 1903.*

Filed Aug. 14, 1903.

In the Supreme Court of the District of Columbia.
the 14th day of August 1903

AMELIA C. TRAVERS ET VIR.,
vs.
JOHN H. TRAVERS ET AL. } Equity No. 21,484.

Exceptions taken by the complainants Amelia C. Travers and Charles E. Travers, and the defendants John H. Travers, James W. Travers, Joseph Travers and Kate M. M. Owens to the report of the Auditor of this Court, to whom this cause was referred by an order heretofore passed herein on the 17th day of June, 1901, which report is without date and was filed in this cause on the 17th day of July, 1903.

The above named parties except to the said Auditor's report and the findings therein as follows, to-wit:

First. For that the said Auditor in and by his said report finds, that according to the construction of the said will and codicils of Nicholas Travers, Sr., deceased, the heirs-at-law of Joseph Travers' deceased, who left a wife surviving him, inherited the property devised to him by his father, the said Nicholas Travers, Sr., and are therefore entitled to the proceeds of sub lots 29 to 32 inclusive, sold by the trustees in this cause; whereas under a true and proper construction of said will and codicils of the said Nicholas Travers, Sr., deceased, and the testimony in this cause, the said proceeds of said lots 29 to 32 inclusive, ought to have been by the Auditor, in his said report, awarded to the exceptants and not to the heirs of Joseph Travers, deceased, and the distribution accordingly of said proceeds by the said Auditor in Schedule A of said report, is not in accordance with the true and lawful construction of the said will and codicils of said Nicholas Travers, Sr., deceased.

410 Second. For that the said Auditor in construing the will and codicils of the said Nicholas Travers, Sr., deceased, finds that the use, by the testator, of the word "or" first appearing in the general provision of his said will was "a deliberate intent" on his part and "should remain"; whereas, these exceptants say that the plain, true and proper construction of said will and codicils shows that the testator intended the word "and" to be used in the place of the said word "or", and that such intention is manifest from the will and codicils themselves. As a part of this second exception the exceptants here quote said general provision of said will, and the same is as follows, to-wit: "With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my will, and I do order and direct, as a general provision,

if any of my sons should die without leaving a wife, or a child
ildren living at his death, then his estate herein devised to
saving and excepting those portions thereof expressly granted
so named to be 'in fee simple' and which they can sell and
ose of as they think fit, shall go, and be invested in fee, to my
iving sons and the child or children of such as may be dead,
child or children representing the share of the father, but if
er of my sons shall, at his death, leave a wife, either with or
out a child or children, such wife shall be entitled to her dower
ts and privileges".

hird. For that the said Auditor in and by his said report finds
James Travers, deceased, a son and devisee of Nicholas Trav-
Sr., deceased, left a lawful wife surviving him, whereas the un-
uted testimony in the case shows conclusively that James
vers did not leave a lawful wife surviving him, and the Aud-
s finding in that regard is not warrranted by the testimony and
is therefore erroneous.

Fourth. For that the Auditor by his report having found
that said James Travers at his death left a lawful wife sur-
ng him as aforesaid, construed the said last will and codicils of
Nicholas Travers, Sr., deceased, in such wise as to vest said
es with an estate of inheritance which passed under the will of
James, whereby the proceeds of sub lots 25, 26 and 33, in said
stees' subdivision of Square 291, by Schedule B annexed to said
litor's report, are distributed in accordance with the provisions
he will of said James; whereas the Auditor ought to have found
n the testimony that James Travers left no lawful wife surviving
, and ought to have construed the said will and codicils of the
Nicholas Travers, Sr., deceased, in such wise as not to vest the
James with an estate which would pass under his said will in
said real estate devised to him by the will and codicils of his said
er in said Square 291, and ought not to have distributed the said
ceeds of sale of said sub lots 25, 26 and 33 in accordance with the
visions of the will of the said James; and ought to have found
t the said word "or" in the general provision of said will of said
holas, according to the intention of the testator as gathered from
will and codicils was intended to be the word "and"; and the
Auditor ought to have further found and made distribution
ordingly, that the exceptants were solely entitled to all the pro-
ds of sale of said sub lots 25, 26 and 33 under the true interpre-
on and construction of the will of said Nicholas.

Fifth. That the said Auditor in his report finds that the exceptants
equitably estopped from asserting that they are entitled to enjoy
said property and its proceeds independently, as asserted in the
of complaint; whereas the Auditor ought to have found from
testimony that the exceptants are not equitably estopped from
asserting their said rights to said property and its proceeds
independently of the other parties to this cause, as alleged in
said bill. And as a further ground of this fifth exception,

these exceptants show that the testimony offered and received under objection in support of an estoppel does not agree or conform with the allegations thereof in the answers, is wholly irrelevant, immaterial and inadmissible, and insufficient in every respect to sustain the Auditor in his said finding of an equitable estoppel as aforesaid.

Sixth. For that the said Auditor in and by his said report finds as follows, to-wit: "The summary of these conclusions are a finding that under the true interpretation of the will of Nicholas Travers, applied to the other conditions existing in the proof here, neither of the brothers took any portion of said property by right of survivorship, that both James and Joseph died possessed of an estate subject to their disposition by will, or, in the absence of such disposition, an estate that descended to their lawful heirs, and in the accompanying Schedules I have stated the distribution of the fund on that basis". And these exceptants for ground of exception say that according to the true interpretation of the said will of Nicholas Travers, and the other conditions existing in the proof here, both the said brothers Elias and James did take said property by right of survivorship, and that upon the death of Joseph, James and Elias Travers became vested in fee with the title to the property devised to Joseph in Square 291, and upon the death of James, Elias, being the sole surviving son, became vested in fee with all the property in said square devised to James, and upon the death of Elias, intestate, the estate passed in fee to his children, and the distribution of the fund made by the said Auditor in the Schedules to his report, and which is a part thereof, is not in accordance with the true interpretation of the said will of the said Nicholas and
413 the testimony in this cause.

Seventh. For that the said Auditor in and by his said report finds as facts the following, to-wit: (1) that James Travers and his alleged wife immediately after the so-called ceremonial marriage in Alexandria, Virginia, "went to Shrewsbury in the State of New Jersey, where they remained for two years"; (2) that the proof concerning that ceremony "established an agreement between the parties to accept each other as husband and wife" and "established a civil contract of marriage good at common law, and that the status of these parties following that alleged ceremony was that of lawful widlock"; (3) "directly after the so-called ceremonial marriage these parties left the state of Virginia and for at least two years resided within a jurisdiction whose laws upon this subject (marriage) are unlike those of the state of Virginia; (4) "that the conditions of management and enjoyment of the property as here detailed, extended over a period of twenty years"; (5) that there was competent evidence of reputation that James Travers and Sophia V. Grayson were husband and wife; whereas the said findings are directly in conflict with the uncontradicted testimony in the case, which shows that these parties did not go, immediately after the alleged ceremonial marriage, to Shrewsbury in the state of New Jersey, and remain there for two years, but did go to Shrews-

bury in the state of New York, and remained there only three or four weeks; that said alleged ceremony does not establish an agreement between the parties to accept each other as husband and wife; that these parties did not, directly after the alleged so-called ceremonial marriage, reside for two years in the state of New Jersey, or in any other state or jurisdiction where a common law marriage was recognized as valid, as the Auditor has found in and by his said report, but the testimony shows, without conflict, that they never established a residence in any state or jurisdiction
414 where a common law marriage was lawful; furher these acceptants say that a common law marriage is not shown to exist in this case, and there is no evidence whatever of reputation that they were husband and wife. The proof shows without dispute that Joseph Travers died September 12th, 1882, and that James Travers died in October, 1883, and the Auditor so finds. This suit was instituted the 8th day of June, 1900, and answers admitting that James Travers died without lawful wife or issue were filed the same year, so that it is plain that the "conditions of management and enjoyment of the property" to which the Auditor alludes as the basis of his finding of an equitable estoppel, did not and could not possibly have extended for twenty (20) years, or, as the Auditor states it, "over a period of twenty years".

Eighth. For that the said Auditor in construing the said will was not governed by the general intent of the testator, as shown by his will, nor did he apparently regard or consider the declaration and intention made by Nicholas Travers, Sr., deceased, the testator, in the codicil to his will, dated June 25th, 1848, in which the following declaration appears: "wherein I declare that all and every portion of my real estate not devised by the use of the words 'in fee simple' shall be held by such devisees for life and then according to stipulations and restrictions as therein contained and declared by said will", and the exceptants say that by said codicil, referring to the general provision in said will, hereinbefore specifically set out, the Auditor should have found that the manifest intention of said will was that wherever the words "in fee simple" were not used, it was intended that the devisees should take an estate which would be ripened into a fee simple only upon his leaving issue, and, in default of issue, the property should vest in the surviving
455 brother or brothers, or the child or children of a brother who should be dead, with the same right to any wife as if he did hold in fee simple.

WHEREFORE these exceptants do except to the said report and findings of the said Auditor and appeal therefrom to the judgment of this Honorable Court.

A. A. BIRNEY,
EDWARD A. NEWMAN
C. H. STANLEY
FILLMORE BEALL,
Solrs. for Exceptants.

192 *Opinion of the Court.*

By Mr. Justice Gould.

Filed January 19, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL., Complainants,
vs.
JOHN H. TRAVERS ET AL., Defendants. } No. 21484. Equity.

The original bill in this case was filed June 8, 1900, praying for a partition of real estate, which was originally owned by Nicholas Travers, and which passed under his will to the parties to this suit; the bill also prayed for a construction of the will of said Travers. Answers were filed by several defendants, and a number of pieces of real estate concerning the title to which there was no question, were sold and the cause referred to the auditor to state the account of the trustees and the distribution of the proceeds of the sale. The auditor stated the account of the trustees, and made a partial statement of the distribution of the proceeds of sale; the parts distributed being those as to which there was no controversy. Subsequently the parties to the suit took proof in regard to the property in dispute, and the subject of the proper distribution of the proceeds of such property was again referred to the auditor, who, on July 17, 1903 filed his report which included an interpretation of the will of Nicholas Travers, and the distribution of the funds based on that construction, and certain facts which the auditor found, as well as
193 the law applicable to such facts. Exceptions were filed to this report and were elaborately argued before me orally, and subsequently briefs were filed by the learned counsel for both complainants and defendants. The questions involved are interesting and close. I have given the case very careful examination, having read every authority submitted by counsel on either side, and am now prepared to state my conclusions.

Nicholas Travers, Sr., died in January, 1849, seized of valuable real estate in this District, much of which is business property located in squares 291 and 379, and now of great value. He left four sons and three daughters, to wit, Nicholas, Jr., Joseph, James, Elias, Sidney V. Mitchell, Mary Wynne, and Elizabeth, also known as Sister Agatha. His will and codicil will be found commencing on page 141 of the printed Record; a caveat was filed to the will on behalf of the daughters, issue framed and the same tried by a jury, the result of the trial being in favor of the will, which was duly probated in the orphans' court.

By the will, the testator made two classes of devises to his sons. By the first class an absolute fee is devised, in which the words

"in fee simple" are used. In the second the devise does not embrace those words, the distinction being expressly recognized and treated by the testator in a general provision, which is set forth in the will as follows:

"With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my will, and I do order and direct, as a general provision, that if any of my sons should die without leaving a wife, or a child or children living at his death, then his estate herein devised to him, saving and excepting those portions thereof expressly granted and so named to be 'in fee simple,' and which they can sell and dispose of as they think fit, shall go, and be invested in fee, to my surviving sons and the child or children of such as may be dead, such child or children representing the share of the father—but if either of my sons shall at his death, leave a wife either with or without a child or
194 children, such wife shall be entitled to her dower rights and privileges."

The property involved in this controversy is real estate, or its proceeds, devised by the will to Joseph Travers and to James Travers, and coming within the limitation of this general provision just recited.

Joseph Travers died intestate in September 1882, leaving a widow, since deceased, and no child or children or descendants of such. His heirs at law were his brothers, Elias and James, and his sisters Sidney Virginia Mitchell, Mary Wynne and Elizabeth Travers.

James Travers died in October, 1883, having executed a will, in which he devised all his interest in property in this District, to his brothers and sisters, having by the same instrument devised to his wife the property of which he was possessed beyond the District of Columbia. At the time of his death, one brother, Elias, survived him, and his three sisters.

It is contended by the complainants in this case, who, together with certain of the defendants, are the heirs at law of Elias Travers:

First that by a proper construction of the will of Nicholas Travers, the words in the said general provision "without leaving a wife, or a child or children" should be made to read "without leaving a wife and child," substituting the word "and" for the disjunctive word "or." This claim is founded upon the assertion that such was the intention of the testator; second, this being the proper construction of the will, it is claimed that inasmuch as neither Joseph nor James left child or children or descendants thereof, then their inter-
195 est in the property passed, under the general provision to their surviving brother Elias, and upon his intestacy, to his heirs at law; third, that even if this is not the proper construction of the will, yet it is contended that James left no wife surviving him, and hence his interest passed to his surviving brother, Elias.

It was conceded in the argument before me by both parties and it is undoubtedly a correct construction, that the estates created by what is called the general provision of the will in Joseph and James

were determinable fees; that is to say, a fee in the first taker, to last till the happening of the specified event, to-wit, his death without wife or children, when at once the fee became vested in the persons designated to take it. In this respect, the case at bar is very like that of Abbott *vs.* Essex Company, 18 Howard, 202. Many other cases could be cited to sustain this proposition, but as there is no controversy in regard to it, I will not take the time.

Upon the first proposition or contention of the complainants, the question then is, did the testator intend an indefinite fee in Joseph and James, should they marry, or was it necessary to this result, that each should leave a child surviving him, and failing this, that the fee should pass to his surviving brothers, subject to a dower right of the widow. It is contended by the counsel for complainants that the dominant idea of Nicholas Travers was to keep his estate in square 291, (the property involved in this controversy) in the direct line of male descendants, to the exclusion of his daughters and their issue; and they declare that to hold if one of his
196 sons should marry and die leaving a widow and no child, the fee should not determine but would pass by inheritance to the very lines the testator had sought to exclude, is to defeat this general intent or dominant idea. The only portion of the will relied upon to sustain the theory of the complainants, is found in what is termed the general provision, the last words of which are, "but if either of my sons shall at his death, leave a wife either with or without a child or children, such wife shall be entitled to her dower rights and privileges." It is argued that this provision is unnecessary if the word "or" is to be retained in the general provision, where it is used between the words "wife" and "child or children."

There is no rule of construction of wills, of more universal application than that the plain and unambiguous words of the will must prevail, and are not to be controlled by any conjecture of doubtful construction, growing out of the situation, circumstances or conditions either of the testator, his property or family. (1 Redfield on Wills, 431.) It seems to me that it would do great violence to the plain and unambiguous language of this will, to change the word "or," to "and," because of any general intention found in the will on the part of the testator, to prefer his sons to his daughters. The estate created by the use of the word "or," is plain and definite, and is entirely a different estate from that which would have been created in the sons, had the word "and" been used instead of "or." Whether this provision for the wife in the absence of child or children was necessary or not, it is at the best mere surplusage, and is not sufficient to establish the theory of the complainants as to the intent of the testator in the words of the general provision. On the
197 other hand, it appears that the testator uses the word "or" with evident deliberation. It is found between the words "wife" and "child," and again between the latter term and the word "children." He also uses the same term in two different parts of the general provision; and uses the same phrase "wife or child

or children" at the close of the first item of disposition in the will. Again, the result of substituting the word "and" in place of the first "or," would deprive the child of any benefit if the wife should not be living at the death of the devisee, a result that certainly could not have been contemplated by the testator. I am therefore in accord with the auditor upon this proposition, that the word "or" in the general provision should not be read "and" and inasmuch as it is conceded that Joseph left a wife surviving him, it follows that the heirs at law of Joseph inherited the property devised to him by the will of his father under this general provision, and that the proceeds thereof should be distributed in accordance with this construction. Second. But it is contended that James left no wife surviving him, and that therefore, under the general provision construed as I have indicated, his heirs at law succeeded to the property in question upon his decease. This raises, what is to my mind, the most interesting and difficult question in the case; namely, the question as to whether James Travers and one Sophia V. Grayson were legally married.

The original bill, in its fifth paragraph, averred that James Travers died without widow or lawful child surviving him. The answers of the defendants all admitted this averment. Later, the defendants, children of his sisters, informed the court by affidavit, that
198 since the filing of the answers to the original bill, and since the decree or order of sale passed herein, evidence had been discovered tending to show that James Travers, now deceased, and Sophia V. O'Brien were lawfully married, and that of the said marriage, there was born the defendant Annie E. Travers. (R. 38.) Being permitted to file amended answers, they averred that James Travers died leaving Sophie V. as his widow, and one child the defendant Annie E. Travers, "born of him, the said James and the said Sophia in lawful wedlock." (R. 36 and 37.) One witness, the alleged wife, testified as to the marriage, and certain documents were put in evidence in which the woman is described as his wife. The testimony of Sophia V. O'Brien, born Sophia V. Grayson, is substantially as follows:

That on August 15, 1865, being then domiciled in West Virginia, she and James Travers, whose domicile was in the District of Columbia, visited Alexandria, Virginia, where a ceremony of marriage was performed by a person representing himself to be a priest, in the presence of witnesses. She and James Travers then went together to a hotel on "Shrewsbury river" in New York State (R. 54–62); here they staid about three or four weeks (R. 62), when they came to the District of Columbia, and staid three or four weeks, when they went to Belair, Harford county, Maryland, where they remained for two years, when they removed to Talbott county, Maryland, where they remained until the summer of 1883, when James Travers being ill, they repaired to a summer resort known as Point Pleasant, New Jersey, where he died in October, 1883. The witness admitted that she learned, about five years after the

alleged marriage, that the person who officiated was not a priest. She further testified, that from the time of their
199 alleged marriage, up to the time of his death, James Travers always treated her as his wife; that after she discovered that the person who performed the ceremony was not a minister, Travers always said that it was all right, that they were just as much married as if they had been married before a priest or minister; and, that Travers always introduced her as his wife in the community where they resided. She produced a mutilated holographic draft of a will dated February 8, 1881, signed by James Travers, in which she is described as his wife; a later will made in his last illness, which also refers to her as his wife, and a mortgage made to secure part of the purchase price of the Talbott farm, dated September 7, 1867, which describes her as his wife, and in which she joined as such; this was substantially all the affirmative testimony to prove the marriage. The only testimony offered by the defendants on this point was, that no marriage license was at any time issued to James Travers and Sophia Grayson, or either of them, in Alexandria county, Virginia.

It is first contended on behalf of the heirs of Elias Travers, that this testimony is not sufficient to establish the marriage, and second, that admitting the facts to be as stated by the witness, they do not constitute a legal marriage. It must be admitted, it seems to me, that in a case involving property of the value of that in controversy, it is remarkable that so little testimony on either side has been adduced upon so vital a point; but I am compelled to take the record as I find it. It seems that in the course of her examination, the alleged wife, who, some years after the death of Travers, married a Philadelphia lawyer named O'Brien, also testified that
200 Annie E. Travers, one of the defendants, was the child of herself and James Travers, born in lawful wedlock; and that during the course of her examination, she broke down, departed from the place where the testimony was being taken, in a somewhat dramatic manner, refused to return and subsequently at her home in Philadelphia, admitted that the child, Annie E. Travers, was not the lawful child of herself and James Travers, but one that they had taken and reared.

It is contended by counsel for the heirs of Elias, that having testified falsely in this respect, her entire testimony should be ignored. While it is true that that false statement should be considered in weighing her testimony, yet, on the record as presented, I could not feel justified in disregarding her story on that account; because, it should be remembered that this witness has no interest whatever in the property which is in controversy, and it is not difficult to understand how a woman, to prevent the stain of bastardy from attaching to a girl whom she had reared and presumably loved, might testify falsely, and yet her statements might be entirely reliable as to other facts in which she had no possible interest direct or remote. Moreover, it is well settled that the law will, if possible, refer *to* the long

continued cohabitation of a man and a woman to a legal origin, rather than an illicit one, if there is evidence upon which legality can be predicated.

Here it is an undenied fact, that this woman and James Travers lived from 1865 to 1883 as man and wife; that fact, as I shall show hereafter by a cited case, may be used as corroborating evidence of even such a marriage as is testified to in this case. I there-
201 fore believe there is evidence sufficient to sustain the proposition, that in Alexandria, Virginia, in 1865, Sophia V. Grayson and James Travers went through a ceremony of marriage before a person not authorized to perform the ceremony; that the woman believed the ceremony to be *bona fide* and that thereafter, for a period of eighteen years they cohabited as man and wife.

I am aware that in a statement made before the examiner by one of the counsel for the defendants, it is averred that, before taking her testimony Mrs. O'Brien informed him that no ceremonial marriage had taken place between herself and James Travers but that they had agreed to be man and wife. Conceding the statement of counsel was evidence in the case, I yet do not think it negatives her sworn statement as to the mock marriage in Alexandria. She may well have concluded, in view of the subsequent information she received after that apparent ceremony was performed that it was not a ceremonial marriage.

But it is claimed that even if these facts are established by the testimony, yet there was no marriage, for the reason that by the Virginia statute of 1849, which was in force in August, 1865, no valid marriage could be celebrated without a license; and it is contended that the decision of the court of appeals of Virginia, in the case of Offield *vs.* Davis, 100 Va., 250, precludes discussion upon that point; and, further, that the marriage being void where celebrated, is void everywhere.

The Virginia case just cited certainly determines that under the above referred to statute, what is commonly called a common
202 law marriage has no validity in Virginia. It therefore must be conceded that in that State, at the date when these parties were alleged to have been married, a marriage *per verba de presenti*, or *per verba de futuro cum copulo*, without any celebration and without license is void. But an examination of this statute raises an entirely different question, as applied to the facts of this case, and one not suggested by counsel on either side nor by the auditor. The section of the code of Virginia in question, reads as follows:

"Every marriage in this State shall be under license, and solemnized in the manner herein provided; but no marriage solemnized by any person professing to be authorized to solemnize the same shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of authority in such person, if the marriage be in all other respects lawful and be consummated with a full belief on the part of the persons so

married or either of them, that they have been lawfully joined together."

Assuming then, that Sophia V. Grayson, believed, as is apparent from her testimony, if it be true, that she was lawfully joined in wedlock to James Travers, by this person in Virginia, why is not that marriage lawful under this statute, in spite of the want of authority in the person who performed the ceremony?

In the case of Meyers *vs.* Pope, 110 Mass., 314, it appeared that a man and a woman went before a justice of the peace with intent on the part of both to contract marriage before the justice; that the man stated in the presence and hearing of the justice that the woman was his wife, and that afterwards he and she cohabited as man and wife, and had children, believing themselves to be lawfully married. The justice testified that he did not understand that
203 he married the plaintiff and the woman at that time, and that all that was said by either of them was, that the plaintiff introduced the woman as his wife; on this evidence, the trial judge ruled that there was no evidence to warrant the jury in finding the fact of marriage. It appears that the statute of Massachusetts contained a provision that a marriage was not to be held void "by want of jurisdiction or authority in such person, or by an omission or informality in the manner of entering the intention of marriage, if the marriage is in other respects lawful, and is consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage." The supreme court said "This includes a marriage where the person celebrating it did not intend to act officially, and knows that he could not do so. The policy of the law as thus expressed, is strongly opposed to regarding the marriage, entered into in good faith, believed by one or both of the parties to be legal, and followed by cohabitation as void.

The similarity of the language of the Massachusetts and the Virginia statutes cannot escape notice.

Even closer to the facts before us, is the case of Smith against Smith, 52 N. J., 207. In that case a man took a woman to Boston, introduced her to a man whom she supposed was a clergyman, who performed a marriage ceremony; they then returned to Vermont, of which State they were both residents, and lived there as husband and wife for nineteen years, when he deserted her and moved to New Jersey where he subsequently died. Before leaving her, he told her she was not legally married to him. The New Jersey court held, that under the Massachusetts statute, already cited, this was a valid marriage in that State, and that such a marriage would
204 be recognized as valid in New Jersey where the real estate was situated in which she demanded dower. And it is further held in this case that long continued cohabitation and reputation may be used as corroborating evidence of such marriage. To quote the language of the court: "After the lapse of many years, slight proof of a marriage, followed by a long continued living to-

gether as man and wife, is often the best and only evidence that can be obtained. The direct proof of an actual marriage depends upon testimony of the demandant herself, supported by evidence of admissions made afterwards by the husband, that a marriage ceremony had been performed in Boston, but in one instance denying its legality."

It seems to me that this construction of a statute similar to the Virginia statute is just and logical. Following it, and assuming that the practically undisputed statements of Mrs. O'Brien are true, and considering the long continued cohabitation of the couple as husband and wife, I conclude that a marriage valid under the Virginia statute has been proven; and if valid in Virginia, it necessarily follows that it is valid in the District of Columbia for the purpose of affecting the transmission of real estate situated here. I therefore agree with the auditor's finding, viz.: that James Travers left surviving him a wife, although reaching this conclusion by a different process than that of the learned auditor.

In the answers filed by the defendants, other than the children of Elias, it was set up that several years before the death of Joseph Travers, which occurred September 12, 1882, an agreement was entered into by Joseph, James and Elias, to the effect that
205 their three sisters should be admitted to share with them in the estate devised by the will of Nicholas Travers, their father; and it is established in the testimony that from May, 1883, down to the institution of this suit, the sisters shared in the rents of the property in accordance with such agreement. It is contended on behalf of the sisters and their heirs, that this long acquiescence of the heirs of Elias in this division of the rents, estops them from now asserting a claim contrary to such an agreement. This raises another very interesting question, but in the view that I take of the case, it is unnecessary to discuss or decide it; because if my construction of the will is correct, and also the finding that James Travers left surviving him a widow, the necessity of any such agreement would be wanting.

For the reasons that I have given, I overrule the exceptions to the auditor's report, and will sign a decree in accordance with this opinion.

ASHLEY M. GOULD, *Justice.*

206 Filed January 19, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL.
vs.
JOHN H. TRAVERS ET AL. } Equity. No. 21484.

This cause coming on to be heard upon the exceptions to the auditor's report filed herein on the 17th day of July 1903, and having been argued by counsel, and considered by the court, it is this

19th day of January 1905, adjudged, ordered and decreed, that said exceptions be, and the same hereby are overruled, and said report is confirmed. And further that the trustees be and they are hereby directed to make distribution of the funds in their hands in accordance with the provisions of said report of the auditor.

From this decree the complainants, Amelia C. Travers and Charles E. Travers and the defendants John H. Travers, Joseph Travers, James W. Travers and Kate M. M. Owens who sever*ing* from their co-defendants herein, which severance is hereby permitted, now in open court pray an appeal which is allowed and the penalty of the appeal bond to operate as a supersedeas is hereby fixed at five thousand dollars.

ASHLEY M. GOULD, *Justice.*

Memorandum.

February 2, 1905.—Appeal bond approved and filed.

207 Filed March 7, 1905.

Supreme Court of the District of Columbia.

AMELIA C. TRAVERS ET AL., Complainants,
vs.
JOHN H. TRAVERS ET AL., Defendants. } No. 21484. Equity.

It is this 3rd day of February, 1905, stipulated between counsel for the respective parties that the foregoing is a true and complete transcript of the record in this cause and that the clerk of the supreme court of the District of Columbia shall accordingly certify and transmit the same as such transcript to the Court of Appeals in pursuance of the appeal noted and taken herein by Amelia C. Travers and others.

GORDON & GORDON,
Solicitors for Sisters of the Visitation.
HAMILTON & COLBERT,
Solicitors for Certain Def'ts.
C. H. STANLEY,
Sol'r for Jno. H. Travers & Others.
FILLMORE BEALL, *Sol'r for Same.*
EDWARD A. NEWMAN,
Sol'r for Complainants and Others.
ARTHUR A. BIRNEY,
Sol'r for Jno. H. Travers et al.

208 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 207, inclusive, to be a true and correct transcript of the record, as per stipulation of counsel herein filed, copy of which is made part of this transcript, in cause No. 21,484, in equity, wherein Amelia C. Travers *et al.* are complainants and John H. Travers *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 7th day of March, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1525. Amelia C. Travers *et al.*, appellants, *vs.* Maria L. Reinhardt *et al.* Court of Appeals, District of Columbia. Filed Mar. 7, 1905. Henry W. Hodges, clerk.

THURSDAY, *May 4th, A. D.* 1905.

No. 1525.

AMELIA C. TRAVERS, CHARLES E. TRAVERS, JOHN H. TRAVERS, JOSEPH TRAVERS, JAMES W. TRAVERS, and KATE M. M. OWENS, Appellants,

vs.

MARIA L. REINHARDT, LOUIS F. REINHARDT, MARGARET M. MITCHELL, ELIZABETH MITCHELL, MARY L. WALLIS, SAMUEL WALLIS, ALICE V. ROHRER, WILLIAM H. ROHRER, SIDNEY MITCHELL, ANNIE MITCHELL, ANNIE E. TRAVERS, and "THE SISTERS OF THE VISITATION," a Corporation.

The argument in the above entitled cause was commenced by Mr. A. A. Birney, attorney for the appellants, and was continued by Mr. W. A. Gordon, attorney for the appellees.

FRIDAY, *May 5th, A. D.* 1905.

No. 1525.

AMELIA C. TRAVERS, CHARLES E. TRAVERS, JOHN H. TRAVERS, JOSEPH TRAVERS, JAMES W. TRAVERS, and KATE M. M. OWENS, Appellants,

vs.

MARIA L. REINHARDT, LOUIS F. REINHARDT, MARGARET M. MITCHELL, ELIZABETH MITCHELL, MARY L. WALLIS, SAMUEL WALLIS, ALICE V. ROHRER, WILLIAM H. ROHRER, SIDNEY MITCHELL, ANNIE MITCHELL, ANNIE E. TRAVERS, and "THE SISTERS OF THE VISITATION," a Corporation.

The argument in the above entitled cause was continued by Messrs. W. A. Gordon and M. J. Colbert, attorneys for the appellees, and was concluded by Mr. C. H. Stanley, attorney for the appellants.

No. 1525.

AMELIA C. TRAVERS, CHARLES E. TRAVERS, JOHN H. TRAVERS, JOSEPH TRAVERS, JAMES W. TRAVERS, and KATE M. M. OWENS, Appellants,

vs.

MARIA L. REINHARDT, LOUIS F. REINHARDT, MARGARET M. MITCHELL, ELIZABETH MITCHELL, MARY L. WALLIS, SAMUEL WALLIS, ALICE V. ROHRER, WILLIAM H. ROHRER, SIDNEY MITCHELL, ANNIE MITCHELL, ANNIE E. TRAVERS, and "THE SISTERS OF THE VISITATION," a Corporation.

Opinion.

(Mr. Chief Justice SHEPARD delivered the opinion of the Court:)

This suit was begun by a bill filed by Amelia C. Travers and her husband, Charles E. Travers, whose assignee she is, for the partition

of certain real estate in the District of Columbia formerly belonging to Nicholas Travers, who died testate in January, 1849. The defendants are heirs at law or claimants under certain devisees of the said Nicholas Travers. The property has been sold by order of the court, all parties consenting thereto, and the distribution of the proceeds of the sale awaits the final determination of the interests of the several claimants thereof.

Nicholas Travers devised a large estate in unequal proportions to his four sons and three daughters—Elias, Nicholas, Joseph, James, Mary, Elizabeth, and Sidney Virginia. The greater portion was devided among the sons named in two classes of devises. In those of the first class he used the words "in fee simple." In the second class these words are omitted. The distinction made between the two is expressly recognized and referred to in the following general provision: "With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my will, and I do order and direct, as a general provision, that if any of my sons should die without leaving a wife, or a child or children living at his death, then his estate herein devised to him, saving and excepting those portions thereof expressly granted and so named to be "in fee simple," and which they can sell and dispose of as they think fit, shall go, and be invested in fee, to my surviving sons and the child or children of such as may be dead, such child or children representing the share of the father—but if either of my sons shall, at his death, leave a wife either with or without a child or children, such wife shall be entitled to her dower rights and privileges." The property involved in this controversy is the real estate (and now the proceeds thereof), coming within the limitations of the foregoing general provision, that was devised to Joseph Travers and James Travers. Joseph Travers died intestate in September, 1882, leaving a widow since deceased, but no child or children or descendants of such. His heirs at law were his brothers Elias and James and his three sisters before mentioned. James Travers died in October, 1883, leaving a will devising his real estate in the District of Columbia to his surviving brothers and sisters, and all property elsewhere to his wife. Whether he was ever lawfully married to the person named in the will as his wife is one of the questions to be determined.

Elias Travers died intestate on April 29, 1887, and his heirs at law are his children, Charles E. Travers and the defendants John H. Travers, Joseph Travers, James W. Travers, Sidney Travers, and Kate M. M. Owens. These last claim the entire interest in the real estate devised to Joseph and James Travers that comes within the limitations of the provision of the will of Nicholas Travers before quoted. The auditor, to whom the settlement of the account of sales and the settlement of the interests of the parties had been referred, found against this contention. He found also that James Travers had been married to the wife named in his will who survived him.

His report was confirmed and a decree entered for the distribution of the proceeds of the sale in accordance therewith, from which this appeal has been prosecuted by the heirs of Elias Travers.

Upon the admitted fact that Joseph Travers, who died intestate, had been lawfully married to a wife who survived him, and assuming, for the time being, that James Travers, who devised all of his estate in the District to his surviving brothers and sisters, left a surviving wife also, the question to be determined is, whether their interests in the real estate embraced within the terms of the general provision of the will of Nicholas Travers passed to the heirs at law of the one, and the devisees of the other, or became vested in the surviving brother Elias?

The answer involves the ascertainment of the intention of the testator as expressed in the language of the general provision which, having been set out above, need not be repeated.

The claim that the entire estate became vested in Elias Travers, upon the death of his brothers Joseph and James, respectively, without leaving a child or children, rests upon the contention that the dominant intention of the testator was to retain the succession, as regards the property embraced in the limitations of the general provision, in the direct line of his male heirs; and that this dominant intention compels a construction of the general provision that would substitute the word "and" for the disjunctive "or" where it first occurs in the line "without leaving a wife, or a child or children." We agree with the opinion expressed by the auditor and the learned trial justice that there is no expression of such a controlling intention as to require this substitution. The words used are plain and unambiguous. This being so they must be given their ordinary and usual meaning, and can not be controlled by conjecture. The same words are repeated in another part of the general provision itself; and at the end of the first item of disposition in the will it is provided that certain of the devises therein "shall be subject to the general provision hereinafter made in case of any of my sons dying without having a wife or a child or children." This repetition of the phrase tends to show deliberation and care in the selection of words expressive of the testator's intention.

That Elias Travers himself, and after his death his heirs, took an entirely different view of the testator's intention from that now maintained on their behalf, is conclusively shown by the testimony introduced by the appellees in support of an allegation in their answers setting up an agreement by way of family settlement. It was alleged that in December, 1882 (after the death of Joseph), Elias and James Travers entered into a written agreement with their three sisters, by which it was provided that the interest of Joseph in the property under the operation of the general provision aforesaid should be treated as the joint and equal property of all of the said parties, which said agreement was carried into effect by entrusting the property to a joint agent who distributed the revenues thereof in accordance with its terms. That after the death of James Travers the same agreement was extended to his interest. And that after the death of Elias Travers the revenues of the undivided property were collected and distributed by the same agent among the heirs of all in their proper proportion until a short time before the filing of the amended bill in this suit.

No such written agreement could be found, nor could direct proof of it be made, because all of the parties who would have had any actual knowledge of the same had departed this life before the controversy began. In the view that we have taken of the proper disposition of the case it is not necessary to determine whether the circumstantial evidence is sufficient to show that such an agreement was in fact executed as alleged. Whether so or not, Elias Travers certainly acquiesced in the claim of his sisters. The evidence shows beyond question that after Joseph's death the rents of his portion were distributed equally between Elias, James, and the three sisters. On January 1, 1886, Elias joined his sisters in the lease of a parcel of the property now in question to one Smith, in which the lessors are recited as "the only heirs at law of the late James Travers, deceased," and which provided that the rent should be paid to the lessors and surrendered to them and their heirs. After Elias' death the same distribution of the rents of the parts of the property devised to Joseph and James was continued.

The only material question that remains for determination is whether James H. Travers was survived, as alleged, by a lawful wife. The only evidence of the marriage consists of the testimony of the alleged wife, since married to another person. She testified to the following facts substantially: She was an orphan 17 years old when she met James H. Travers, and her domicile was in West Virginia. James H. Travers lived in the District of Columbia. She went with him to Alexandria, Virginia, in August, 1865, where what she supposed to be a regular marriage ceremony was celebrated between them. There was no marriage license in fact, and the person who performed the pretended marriage ceremony was not a minister, though she believed him to be one at the time. They cohabited thereafter until James Travers' death at Point Pleasant, New Jersey, on November 1, 1883. They first took a trip to New Jersey; were in New York on several visits, and spent about three weeks in the city of Washington, boarding with a tenant of Travers. She believed that she had been lawfully married until she learned the truth about six years afterwards. He always said "that it was all right, and we were just as much married as if we had been married before a priest or a minister." In 1867 he bought a farm in Talbot County, Maryland, where they lived together nearly sixteen years. During the whole time he called her and introduced her as his wife, and she was so recognized in the community generally. They removed to Point Pleasant, New Jersey, in 1883, and she was there recognized and reputed to be his wife until his death. She had two children by James Travers, both of whom were stillborn. By way of corroboration a mortgage, executed on September 27, 1867, to secure the purchase money of the Talbot County farm, by James Travers and his wife, Sophia V. Travers, was read in evidence. She was named therein as his wife, and her acknowledgment was so taken and certified to by a justice of the peace. The instrument was duly recorded. An unattested will purporting to have been executed by James Travers in Talbot County, Maryland, on February 8, 1881, in which the bulk of his estate is devised and bequeathed to "my

wife, Sophy Virginia Travers," was also produced. Another will was read in evidence, that was made at Point Pleasant, New Jersey, October 5, 1883. This was duly executed and attested by three witnesses. It was probated in the proper court in New Jersey, and letters testamentary were issued to said Sophia V. Travers. Later it was registered in the District of Columbia. By this will the testator devised all of his estate in the District of Columbia to his brothers and sisters. The remainder of his property of every description he devised and bequeathed, as recited, "to my wife while she remains my widow," with full power of alienation, etc., with remainder over to a daughter of such as may remain undisposed of at her decease. It is further recited: "In the event of my wife's contracting another marriage then it is my will that she shall possess and enjoy as of her own right only one-third of the property remaining." * * * By the last clause his wife is appointed sole executrix.

It is contended that no weight whatever should be given to the oral testimony above summarized, because on cross-examination the witness admitted that she had testified falsely in one particular. It appears that on her first examination she became greatly excited and abruptly left the examiner's office. Later her cross examination was resumed in Philadelphia, where she had her residence. She then confessed to having made a false statement relating to a matter not hereinbefore stated. We can not agree with the contention that the conditions presented compel the application to this evidence of the maxim, *falsus in uno falsus in omnibus*. The witness had no interest whatever in the subject-matter of the litigation. The single false statement related to a matter not material in the determination of the case. Its recital is unnecessary, it being sufficient to say that it involved the reputation of another person, and that the temptation to shield that reputation was a strong one indeed. Having made the statement, she subsequently admitted its falsity under no apparent fear of contradiction or penalty. No withdrawal was made of any statement concerning her relations with James Travers, and no attempt was made to contradict any one of them, although the cross-examination shows that inquiry had been made in the community in which she lived so long in Maryland concerning his representations that she was his wife. Moreover, the documentary evidence before recited corroborates every statement made by her save that relating to the pretended marriage ceremony. That statement does not appear to be incredible, but whether it be true or false is, in our view of the case, of no practical importance.

The legal status of the said Sophia V., as the wife of James Travers at the time of his decease, does not depend upon the law of Virginia where the pretended marriage ceremony was performed. And it may be conceded that the pretended marriage was absolutely void in that State for the want of the statutory license. Offield *v.* Davis, 100 Va. 250. Nor does it depend upon the law of Maryland wherein so many years of the alleged married life of the parties were spent. Consequently it is unnecessary to determine whether, in that State, though a valid marriage will be presumed upon proof of

cohabitation, general reputation, and acknowledgment of the existence of the relation, it will so be in a case where it is shown that cohabitation began without the requisite ceremony. See Barnum *v.* Barnum, 47 Md. 251, 296; Richardson *v.* Smith, 80 Md. 89, 93.

That an informal marriage by contract *per verba de presenti* constitutes a valid marriage by the common law, which then, at least, prevailed in the District of Columbia, there can be no doubt. Meister *v.* Moore, 96 U. S. 76, 78. But whether a lawful marriage has been shown in this case depends upon the law of New Jersey; where the parties had their domicile at the time of the death of James Travers. If lawful there it will be recognized here. It seems well settled in that State that a valid marriage may be entered into by contract *per verba de presenti;* no particular ceremony is necessary. Nor is it of any consequence that the original relations of the parties may have been illicit, provided there be sufficient evidence that a contract of marriage was thereafter made. Atlantic City R. R. *v.* Goodin, 62 N. J. L. 394, 401.

That was an action for damages for an injury resulting in death, brought by the alleged widow of the deceased. There had been a ceremonious marriage between the parties many years before, but at that time Goodin had a lawful living wife from whom he had separated. After obtaining knowledge of that fact, plaintiff continued to cohabit with him. About 1892, the real wife died. Presumption of marriage, it was said, could not be indulged from the mere fact of cohabitation illicit in its commencement. The plaintiff testified, however, to a contract with Goodin, made verbally after the death of his first wife. There was no other evidence tending to show such a contract save a declaration made by Goodin sometime in 1892 or 1893, to a niece of plaintiff, and testified to by her alone, that, "Your aunt now is my lawful wife." Upon this evidence plaintiff was held to be his lawful wife.

The testimony in this case is far stronger. The alleged wife testified to statements made to her by James Travers, after her discovery of the fact of the unlawfulness of the marriage, tending in some degree to warrant an inference of contract. This was followed by his public recognition of her as his wife, testified to by her, and shown in the recitals of the mortgage and of the unprobated will written by himself. After taking up residence in New Jersey, he continued to recognize her publicly as his wife. Whatever doubt there might be of the sufficiency of this evidence alone is settled by the recitals of the will made in New Jersey. Therein he devised and bequeathed certain of his estate to her as his wife, without giving her name, the amount thereof dependent upon her remaining his widow. And by another recital, whether so intended or not, he met the very condition of a previous actual contract of marriage by the words, "in the event of my wife's contracting another marriage." She could not contract another marriage unless she had first contracted one with him.

We are of the opinion that the evidence is sufficient to show that James Travers had a lawful wife at the time of his decease. In ac-

cordance with the foregoing conclusions, the decree must be affirmed with costs; and it is so ordered.

Affirmed.

TUESDAY, *May 23rd, A. D.* 1905.

No. 1535, April Term, 1905.

AMELIA C. TRAVERS, CHARLES E. TRAVERS, JOHN H. TRAVERS, JOSEPH TRAVERS, JAMES W. TRAVERS, and KATE M. M. OWENS, Appellants,

vs.

MARIA L. REINHARDT, LOUIS F. REINHARDT, MARGARET M. MITCHELL, ELIZABETH MITCHELL, MARY L. WALLIS, SAMUEL WALLIS, ALICE V. ROHRER, WILLIAM H. ROHRER, SIDNEY MITCHELL, ANNIE MITCHELL, ANNIE E. TRAVERS, and "THE SISTERS OF THE VISITATION," a Corporation.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. CHIEF JUSTICE SHEPARD.

May 23, 1905.

TUESDAY, *June 6th, A. D.* 1905.

No. 1525.

AMELIA C. TRAVERS, CHARLES E. TRAVERS, JOHN H. TRAVERS, JOSEPH TRAVERS, JAMES W. TRAVERS, and KATE M. M. OWENS, Appellants,

vs.

MARIA L. REINHARDT, LOUIS F. REINHARDT, MARGARET M. MITCHELL, ELIZABETH MITCHELL, MARY L. WALLIS, SAMUEL WALLIS, ALICE V. ROHRER, WILLIAM H. ROHRER, SIDNEY MITCHELL, ANNIE MITCHELL, ANNIE E. TRAVERS, and "THE SISTERS OF THE VISITATION," a Corporation.

On motion of Mr. A. A. Birney, of counsel for the appellants in the above entitled cause, it is ordered by the Court that said appellants be allowed an appeal to the Supreme Court of the United States, and the bond to act as supersedeas is fixed at the sum of $20,000.

Know all men by these presents, that we, Amelia C. Travers, Charles E. Travers, John H. Travers, Joseph Travers, James W. Travers, and Kate M. M. Owens, as principals, and The United

States Fidelity and Guaranty Co. a corporation, as surety, are held and firmly bound unto Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation," a corporation, in the full and just sum of twenty thousand dollars, to be paid to the said Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation," a corporation, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 28th day of June, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between said Amelia C. Travers and others, appellants, against the said Maria L. Reinhardt and others, appellees, the same being numbered 1525 on the docket of said Court, April Term, 1905, a decree was rendered against the said Amelia C. Travers, Charles E. Travers, John H. Travers, Joseph Travers, James W. Travers and Kate M. M. Owens, and the said Amelia C. Travers, Charles E. Travers, John H. Travers, Joseph Travers, James W. Travers, and Kate M. M. Owens having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alic V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation" a corporation, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, that if the said Amelia C. Travers, Charles E. Travers, John H. Travers, Joseph Travers, James W. Travers, and Kate M. M. Owens shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

AMELIA C. TRAVERS. [SEAL.]
CHARLES E. TRAVERS. [SEAL.]
JOS. TRAVERS. [SEAL.]
JAMES W. TRAVERS. [SEAL.]
JOHN H. TRAVERS. [SEAL.]
KATIE M. M. OWENS. [SEAL.]

[Seal of the United States Fidelity & Guaranty Co.]

THE UNITED STATES FIDELITY & GUARANTY CO.,
By J. S. SWORMSTEDT, *Attorney in Fact.*

Sealed and delivered in the presence of

As to Amelia C. Travers,
EDWARD A. NEWMAN.

As to Charles F. Travers,
JOHN H. COYLE.

As to John H. Travers,
J. P. CURLEY.

As to Joseph Travers and James W. Travers,
C. H. STANLEY.

As to Kate M. M. Owens,
FILMORE BEALL.

Approved by

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Bond satisfactory,
GORDON & GORDON,
For Sisters of Visitation.

HAMILTON & COLBERT,
For Maria L. Reinhardt et al.

(Indorsed:) No. 1525. Amelia C. Travers *et al.*, appellants, *vs.* Maria L. Reinhardt *et al.* Bond on appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Jun 29, 1905. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation," a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Amelia C. Travers, Charles E. Travers, John H. Travers, Joseph Travers, James W. Travers and Kate M. M. Owens are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court

of Appeals of the District of Columbia, this 29th day of June, in the year of our Lord one thousand nine hundred and five.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted July 3, 1905.

GORDON & GORDON,
For Sisters of Visitation.

Service accepted June 30, 1905,
HAMILTON & COLBERT,
For Maria L. Reinhardt et al.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jul- 3, 1905. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 213 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Amelia C. Travers, Charles E. Travers, John H. Travers, Joseph Travers, James W. Travers, and Kate M. M. Owens, Appellants, *vs.* Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation," a corporation, No. 1525, April Term, 1905, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 5th day of July A. D. 1905.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 19,839. District of Columbia Court of Appeals. Term No. 76. Amelia C. Travers, Charles E. Travers, John H. Travers, *et al.*, appellants, *vs.* Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, *et al.* Filed July 10, 1905. File No. 19,839.

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Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 76.

AMELIA C. TRAVERS ET AL., APPELLANTS,

vs.

MARIA L. REINHARDT ET AL., APPELLEES.

APPELLANTS' BRIEF.

BERNARD CARTER,
ARTHUR A. BIRNEY,
CHARLES H. STANLEY,
EDWARD A. NEWMAN,
FILLMORE BEALL,
Attorneys for Appellants.

LAW REPORTER PRINTING CO., WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 76.

AMELIA C. TRAVERS ET AL., APPELLANTS,

vs.

MARIA L. REINHARDT ET AL., APPELLEES.

APPELLANTS' BRIEF.

Statement of Facts.

Nicholas Travers, Sr., late of the District of Columbia, died in January, 1849, seized of real estate in the city of Washington, much of which is business property located in squares 291 and 379, and now of great value. He left four sons and three daughters, to wit: Nicholas, Jr., Joseph, James, Elias, Sydney V. Mitchell, Mary Wynne, and Elizabeth, also known as Sister Agatha. He died testate, and his will and codicils will be found commencing on page 141 of the record. A caveat was filed against the will on behalf of the daughters, and issues were framed and tried in 1851, the result of the trial being in favor of the will, which was duly probated in the Orphans' Court of this District. By the will the testator made two classes of devises to his sons. By the first class an absolute fee is devised, in which the words "in fee simple" are used. The second class does not embrace those words, the distinction being expressly

recognized and treated by the testator in a general provision, which is set forth in the will as follows:

> "With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my will, and I do order and direct, as a general provision, that if any of my sons should die without leaving a wife, or a child, or children living at his death, then his estate herein devised to him, saving and excepting those portions thereof expressly granted and so named to be 'in fee simple,' and which they can sell and dispose of as they think fit, shall go, and be invested in fee, to my surviving sons and the child or children of such as may be dead, such child or children representing the share of the father—but if either of my sons shall at his death leave a wife, either with or without a child or children, such wife shall be entitled to her dower rights and privileges."

There is no contest over the first class of devises above mentioned, the litigation here being confined to the devises of the second class, made to the sons Joseph and James of property in square 291.

Pending the controversy over the will, Nicholas, Jr., died unmarried and intestate, and in the year 1852, a partition by deed was had of the estate devised to him by his father's will, among the three surviving brothers, Joseph, James, and Elias, the deeds thereof being found on pages 135, 136, 137, 138, 139, and 140 of the record. From 1852 to 1882 these three brothers were seized and possessed, without question, of all the property devised to them respectively and to Nicholas, Jr., by the terms of their father's will. None of the sons of the testator except Elias, left any children. Joseph died intestate September 12, 1882, leaving a widow but no children; James died testate in October, 1883, without children. It is claimed by appellees that he left a widow, but this is disputed by appellants. Elias died intestate April 29, 1887, and left six children and a widow (since deceased),

surviving him. The children are the complainant, Charles E. Travers, and the defendants, John H., Joseph, James W., and Sidney Travers and Kate M. M. Owens, all of whom except Sidney, now deceased, are appellants to this court. Pending this suit, on May 5, 1901, Sidney, a son of Elias, died intestate, leaving his brothers and sister above mentioned as his only heirs at law (Rec. p. 33). Amelia C. Travers, wife and alienee of Charles E., is also an appellant.

James Travers, son of Nicholas, left a will in which he devised to his brothers and sisters "all his interest and property however held in the city of Washington and District of Columbia" (Rec. p. 129).

The bill in this cause is for partition by sale. The complainants are Charles E. Travers (son of Elias, who was the last surviving son of Nicholas, the testator), and Amelia, his wife and alienee (Rec. p. 3), while the defendants are the other heirs at law of said Elias *and the representatives of the daughters of the testator Nicholas.* There is no conflict of interest among the representatives of Elias Travers, the questions in controversy being between them as a class, and the representatives of the daughters of the testator Nicholas as a class, the heirs of Elias claiming, to the exclusion of the appellees, the properties taken by Joseph and James Travers, respectively, under the will of Nicholas and affected by the "general provision" thereof; the appellees claiming to share therein. The rights of the parties to the Joseph Travers property are to be determined by the construction to be given the will of Nicholas, while the rights to the James Travers property depend in addition upon questions of fact *de hors* the will, which may be stated in the form of questions as follows:

1st. Was James Travers lawfully married to Sophia V. Grayson?

2d. Did he leave a lawful child surviving him?

3d. Did James and Elias Travers enter into a binding agreement with their sisters which admitted the right of the sisters to share in the property devised to Joseph, James and Elias by their father, and estops the heirs of Elias to deny such right?

The contentions on the part of the appellees are:

1st. That upon the death of Joseph, leaving a widow, his estate became indefeasible, and forthwith descended to his heirs generally.

2d. That James married and died, leaving a widow, and the devise to him thereupon became indefeasible, and was carried by his will to his brothers and sisters equally.

3d. That birth of lawful issue was not necessary in either case to the absolute fee in each devisee, but marriage alone was sufficient.

4th. That in the lifetime of Joseph, James and Elias Travers an understanding was reached whereby the right of the sisters to share in the estate devised by Nicholas Travers was admitted, and—

> "that shortly after the death of Joseph and in December, 1882, this understanding was embodied in a written agreement wherein it was provided that in consideration of love and affection and to avoid any more dispute and litigation . . . the several lots which had been devised to the said Joseph, James, and Elias Travers should thereafter be considered freed from the trust provisions created by said will and codicils," and that "this agreement was recognized by James and Elias and carried into full force and effect" (Rec., pp. 20, 23).

The appellants contend:

1st. That the fee in each devisee was determined if he died without issue surviving, and that by the executory devise, it forthwith passed to his surviving brothers or brother.

2d. They concede that Joseph Travers married and left a widow; they deny that James Travers married, and say that his fee was at his death determined (under any construction of the will of his father), and passed to his only surviving brother, Elias, unaffected by the terms of James' will.

3d. They deny that any valid or binding agreement was made by Elias and James with their sisters, by which the latter were let in to share in the property, and claim that there is no proof of such agreement.

By agreement of the parties (Rec., p. 31) the property in dispute was decreed to be sold by trustees and the proceeds held in place thereof. The fund now in court is that part of the proceeds of sale of properties devised to Joseph Travers, and of properties devised to James Travers by their father, without the use of the words "in fee simple," which is claimed by the heirs of their sisters.

The cause having been referred to the auditor to distribute the fund, he found in favor of the sisters both as to the properties devised to Joseph, and those devised to James; Justice Gould, holding the equity court, affirmed this finding, as did the court of appeals, from whose judgment this appeal is taken.

Assignment of Errors.

The Court of Appeals erred:—

First. In holding that the estate vested in Joseph Travers by the will of his father, and covered by the general provision of such will, was not determined at the death of Joseph Travers without a surviving child.

Second. In holding in like manner as to the estate so devised to James Travers and covered by the same general provision.

Third. In holding that at the death of Joseph Travers

the estate so devised to him, and covered by such general provision, descended to his heirs at law.

Fourth. In holding that James Travers was married and left a wife surviving him.

Fifth. In holding that the will of James Travers was operative upon the premises in dispute, and that the representatives of his sisters were entitled to share in the proceeds of sales thereof.

Sixth. In holding that at the death of Joseph Travers the properties so devised to him by his father, Nicholas, did not pass to his surviving brothers, James and Elias, to the exclusion of their sisters.

Seventh. In holding that at the death of James the properties so devised to him by his father, Nicholas, did not pass to his surviving brother, Elias, to the exclusion of his sisters and their representatives.

ARGUMENT.

I.

The Joseph Travers Property.

If, under the will of his father, Joseph Travers took an estate in fee, which, upon his marriage, became indefeasible and descended to his heirs, it is conceded by the appellants that, as to the Joseph Travers part of the property in question, the decree below is right. If to render his estate indefeasible it was essential that he should leave a child surviving him, it was wrong.

The testator devised all his real estate, except a small portion thereof, to his four sons. By a codicil (Rec., p.

146) he revoked the devise to his daughter Elizabeth and gave that parcel to one of his sons.

In making the devises to his son Elias and a portion to his son Joseph, he made them to such son, "his heirs and assigns forever in fee simple" (Rec., pp. 141, 142). The other devises are to his several sons, "their heirs and assigns forever," without the addition of the words "in fee simple." No devises are in terms of a less estate. That the testator deliberately made the distinction in the terms of these two classes of devises is shown by the "general provision," of the will, to the effect of which he subjects each of the devises of the second class (Rec. pp. 142, 143).

In the codicil of his will, dated June 26, 1848, being the last codicil in which he explained his intentions, Nicholas Travers revoked a devise made in a former will of July 10, 1840, and two other codicils, and provided as follows:

> "And in lieu thereof I do hereby give and devise all of said lots or part of lots, so as aforesaid described, with the house and other improvements and appurtenances, to my son James and his heirs, subject to the express stipulations and restrictions contained in the will to which this is a codicil, wherein I declare that all and every portion of my real estate not devised by the use of the words 'in fee simple,' shall be held by such devisees for life, and then according to stipulations and restrictions as therein contained and declared by said will" (Rec., p. 151).

The Estate of the First Taker.

The language of the devises was, without more, ample to create a fee simple. Qualified by the general provision, each of the devises affected thereby became a determin-

able fee in the first taker, with an executory devise over to the surviving sons and the child or children of such as might be dead.

Abbott *vs.* Essex Company, 18 Howard, 202.
Richardson *vs.* Noyes, 2 Mass., 56.
Underhill on Wills, pp. 1272, 1274.

The general intent must govern the construction.

It is a rule in construing wills that where a general intent is apparent upon the face of the will, and a particular intent is also expressed which conflicts with such general intent, the latter will prevail.

2 Williams on Executors (7th Am. ed.), p. 333.
Chase *vs.* Lockerman, 11 G. & J., 286.
Thompson *vs.* Young, 25 Md., 459.
Taylor *vs.* Watson, 35 Md., 524.
Smith *vs.* Bell, 6 Pet., 68.
In re Banks' Will, 87 Md., 425.

The construction of the will is to be made from the entire instrument, including the codicil, and the intent of the testator thus ascertained be permitted to govern.

In Jones *vs.* Wright, 2 Bligh, 49, the limitation was to the heirs, executors, and administrators. The word heirs was used thirty times. The court declared it a flexible word, and as used by the testator meant children, the result being reached by giving effect to the general intention of the testator.

"We must be guided by the testator's lexicon and understand his language as he defines it."

White *vs.* Crenshaw, 5 Mackey, 115.

Where two clauses in a will operate on the same property, devising it differently, giving it to different

devisees, or showing a different technical intention, the latter clause will prevail.

Dugan *vs.* Hollins, 13 Md., 149.
Manning *vs.* Thurston, 59 Md., 226.

To apply these general principles to the will in question: *The general intent of the testator was that his real estate should descend only through his sons, and that his daughters and their descendants should not have share therein.* This is shown by the fact that practically all the real estate was devised to the sons to the exclusion of the daughters, and by the provision that at the death of any of his sons, without a surviving child or widow, the property not devised to him "in fee simple" should pass to his surviving brothers and the child or children of any deceased brother, and not to his heirs generally.

The son Joseph married, and died intestate, leaving a widow, but no children. The claim of the appellees is, that because he left a widow the conditional fee in Joseph became absolute, and descended to his heirs generally; that is, to his brothers *and his sisters*, thus defeating the general intention that the sisters should not have the land.

The more reasonable construction of the general provision is, that upon the death of Joseph, childless, but leaving a widow, the widow was to have dower as if the fee in Joseph were not determined, but by the executory devise the fee was to pass to the surviving brothers. The reference to the widow was to insure to her dower, not to divert the fee from the sons.

The general intent of the testator being to keep his real estate within the male line of descent, to the exclusion of the female, is it to be supposed that he was willing that this intent should be defeated by the mere marriage of a son? He might be willing to measurably provide for a widow, through an allowance equal to

dower, *but the existence of the widow affords no reason for letting in the daughters to heir.*

Courts will change or mold language so as to give effect to the intention.

> Schouler on Wills, 3d ed., sec. 477.
> Jarman on Wills, 505, 507.
> Doe *vs.* Watson, 8 How., 262, 272.
> Hance *vs.* Noble, 172 U. S., 383, 389.
> Hardenbergh *vs.* Ray, 151 U. S., 126.
> Shugloff *vs.* Johns, 87 Md., 273.
> Scarlett *vs.* Montell, 95 Md., 157.

The words "wife or child or children" should be read wife *and* child or children. The cases cited and many others justify such change.

The auditor says (Rec., p. 82) this—

> "would result in depriving the child of any benefit if the wife should not be living at the death of the devisee, a result which certainly could not have been contemplated."

This is not a just conclusion, for the manifest general intent of the will is that the fee given the sons should be determined only upon death without issue; in case of issue the fee remained to such issue and the wife had dower. When this was followed by providing dower for the wife on the termination of the fee, the testator emphasized his manifest intention that the surviving brothers or their issue should not deprive the widow of dower. There is otherwise no sense in the provision for dower, if death, leaving a widow, made the fee absolute and indeterminable, for the devisee could not in that case have deprived her of dower.

The doctrine laid down by Schouler applies strongly here:

> "The predominant idea of a testator's mind, when discovered, is to be heeded as against all doubtful and conflicting provisions which might of themselves defeat it; and the general intent and particular intent being inconsistent, the latter (the particular) must be sacrificed to the former—the general intent."
>
> Schouler on Wills, sec. 476.

Joseph Travers died, leaving a widow but no child. We submit that, subject to dower in that widow, his surviving brothers, Elias and James, took the fee by way of executory devise, and that it did not descend to the heirs of Joseph.

If we are right in this contention, and the auditor, therefore, erred in letting in the appellees to share as heirs to Joseph, he was equally in error in letting them in to share in the estate devised by Nicholas to his son James, for it will not be contended that James left a child. The appellants deny that he was married.

II.

The James Travers Property.

If the will be construed as we contend, the proceeds of the devises to James, affected by the general provision, must be awarded to the appellants, for it will not be claimed that he left a child surviving him; if, however, this point be ruled against the appellants, they must yet succeed, unless it has been shown, either, first, that James Travers married and his wife survived him; or, second, that he and his brother Elias (the last survivor of the brothers) entered into a binding agreement with their sisters that they should share as heirs in the property thus devised to James. No such marriage was proved, and the alleged agreement or estoppel was not established.

The Alleged Marriage of James Travers.

The original bill, in its fifth paragraph (Rec., p. 2), averred that James Travers died without widow or lawful child surviving him. The answers of the defendants all admitted this averment (Rec., pp. 8, 22). Eighteen months later the defendants, children of his sisters, informed the court by affidavit that—

> "since the filing of the answers to the original bill and since the decree or order of sale passed herein, evidence has been discovered tending to show that James Travers, now deceased, and Sophia V. O'Brien were lawfully married, and that of said marriage there was born the defendant, Annie E. Travers" (Rec., p. 38).

Being permitted to file amended answers, they averred that James Travers died, leaving Sophia V. as his widow, "who was his lawful wife many years," and he left also one child, the defendant, Annie E. Travers, "born of him, the said James, and the said Sophia in lawful wedlock" (Rec., pp. 36, 37).

To prove these most important averments appellees called one witness—the alleged widow.

The woman's story is, that on August 15, 1865, being then domiciled in West Virginia, she and James Travers, whose domicile was in the District of Columbia, visited Alexandria, in the State of Virginia, where a ceremony of marriage was performed by a person who represented himself to be a minister, in the presence of witnesses. She and James Travers then went together to an unidentified hotel on "Shrewsbury River," which the witness locates in New York State (Rec., pp. 54, 62), but which the auditor states is in New Jersey (Rec., p. 82). Here they stayed "about three or four weeks" (Rec., p. 62), when they came to the District of Columbia and stayed three or four weeks (Rec., p. 62), when they went to Belair, Harford,

County, Maryland, where they remained for two years, when they removed to Talbot County, Maryland, where they remained until the summer of 1883, when, James Travers being ill, they repaired to a summer resort known as Point Pleasant, in New Jersey, where he died, October, 1883. The witness says that she learned about five years after the alleged marriage, that the person who officiated was not a minister (Rec. p. 56). She avers that James Travers always treated her as his wife and introduced her as such in the communities where they resided (Rec., p. 57). She produced a mutilated olographic draft of will, dated February 8, 1881, claimed by her to be signed by James Travers, in which she is described as wife; a later will made in his last illness, which also refers to her as wife, and a deed of mortgage made to secure part of the purchase price of the Talbot County farm, dated September 27, 1867 (Rec., p. 72), which describes her as wife, and in which she joined as such. These were all the affirmative proofs of marriage, but, before the case for those asserting the marriage was closed, one of their counsel, desiring to relieve himself of any possible charge of responsibility for the admitted false swearing of this witness, took the stand and testified that she had told him that *no ceremony of marriage was performed* (Rec., p. 70). Defendants then proved by the proper custodian of records of marriage licenses in Alexandria County, Virginia, that no marriage license was at any time issued to James Travers and Sophia Grayson, or either of them (Rec., 76).

This was all the evidence introduced upon the subject of James Travers' marriage. Although the woman in the course of her testimony confessedly swore falsely in asserting when first examined that she had borne living children to James Travers and that one was yet alive, the auditor, Justice Gould, and the Court of Appeals, severally, ignored the testimony of Mr. Colbert, above

noted, accepted her story of a ceremonial marriage as true, and, so accepting it, found that James Travers was lawfully married.

No two of the decisions agree upon the grounds for the finding and all three are unsound.

The auditor held that—

> "conceding that the so-called marriage in Virginia did not . . . create a lawful relation of husband and wife . . . it established a marriage good at common law and being followed by a departure from that jurisdiction and residence in the State of New Jersey for a time immediately following, and again, at a later part of their lives, . . . the status of these parties, following that alleged ceremony, was that of lawful wedlock" (Rec., 85).

This opinion, contradictory in itself in holding that the so-called marriage was at once unlawful by statute and lawful by common law, loses all right to consideration when found to be based on the wholly unwarranted premise that immediately after the supposed ceremony the parties went to New Jersey "where they remained two years" (auditor's op., Record, p. 82). The only testimony on this point is that they stayed at a hotel in New Jersey "about three or four weeks" (Rec., pp. 62, 196).

Justice Gould, in deciding the case, ignored the argument of the auditor, but held there was a valid marriage in Virginia *because the supposed ceremony was conducted by an imposter* and not by an authorized officer or clergyman. This view was based upon an amazing misconstruction of the Virginia statute, was expressly repudiated in the Court of Appeals by counsel for appellees, and was not alluded to by that court in its opinion.

The Court of Appeals' opinion concedes that the pretended marriage was absolutely void in Virginia for the

want of the statutory license, and holds the parties were married only because they lived together in New Jersey for a few months before James Travers died, and he there recognized the woman as his wife.

There is no suggestion, either in the evidence or in the opinion, that any contract was entered into or promise made in New Jersey, *but the alleged cohabitation in that State for a few months, and the devise by James Travers* "to my wife while she remains my widow" (Rec., 129) are declared sufficient to establish *a marriage in New Jersey.*

In the evidence the only allusions to the living in New Jersey are found in the deposition of the alleged wife, at pages 54, 62, 65, of the record, and they amount to no more than that the parties lived there for the time stated. There is no testimony that the parties were reputed husband and wife, unless the statement of the woman, that she always lived with Mr. Travers as his wife and that Travers always introduced her as his wife (Rec., 57), can be taken as establishing such repute.

We submit that the conclusion of the Court of Appeals is wholly untenable.

Was there a Ceremony of Marriage?

The finding that a ceremony of marriage was performed between the parties was error.

This finding is made upon the unsupported testimony of a woman, who, having sworn that she bore two living children to James Travers, and that the defendant, Annie Travers, was one of them (Rec., 55, 69), afterward admitted that this was wholly false, that she bore no living children, and that Annie Travers was the child of another woman (Rec., p. 51); and it wholly ignores the testimony of Mr. Colbert that she told him there was no ceremony (Rec., p. 70). It also ignores the facts that she could name neither the person who performed the

ceremony, nor any of the several supposed witnesses thereto; that she was without any certificate, and that none of James Travers' female relatives at any time had anything to do with her; and that no friend or neighbor was produced to testify that she was reputed to be a wife. There is nothing but the unsupported statement of a perjured witness to show a ceremony, and even this is contradicted by her previous statement to opposing counsel, that there was no ceremony (Rec., 70).

In the very similar case of Arnold *vs.* Cheeseborough (46 Fed., 701, affirmed 58 Fed., 840), the plaintiff's only evidence of a ceremonial marriage was the testimony of the alleged wife. The court refused to accept it. She had testified to a marriage by a clergyman. The court said:

> "She could not give his name, or residence, and stated that no witnesses were present. She made no mention of a marriage certificate or a wedding ring. The testimony did not offer any details tending to fix the place where the alleged marriage took place, or the person performing it, or the attendant circumstances. It suffices to say of it, that it was improbable and incredible."

In the case at bar, the woman testified that the ceremony was performed by a person since dead (Rec., 56), whose name she had known but had forgotten (Rec., 56, 62), at a house she does not describe, in the presence of two witnesses, of whom she says: "I don't remember who they were and did'nt know anything at all about them" (Rec., 62), and she obtained no certificate (Rec., 62), makes no mention of a ring and she also admitted to Mr. Colbert that there was no ceremony (Rec., 70).

To this add the evident refusal of the woman's aunt, and of Travers' sisters to recognize the relation as lawful during the whole period of the cohabitation (Rec., 63, 64), and the sworn answers in this cause of the children of two of those sisters (Rec., 22) admitting the averment

of the 5th paragraph of the bill that James Travers died without widow or lawful child, and we have the strongest circumstantial evidence against the idea that there was ever a ceremony of marriage, or that the woman *ever believed herself married; certainly the reputation in the Travers family was always distinctly the other way.*

See also the power of attorney from Elias and James Travers to Thos. J. Fisher & Co., dated October 25, 1882 (one year before the death of James), witnessed by the alleged wife in her name of "S. V. Grayson" (Rec., p. 155).

The witness proved herself unworthy of belief, and this discredited her entire testimony. When first examined in October, 1902, she swore that she bore two living children to James Travers, one of whom was still living, and gave details of their births (Rec., 54, 55, 60, 67, 68, 69), but when recalled to complete her deposition, three months later, admitted that her story of the children was wholly false (Rec., 51, 52).

> ". . . courts of justice, under such circumcumstances, *are bound upon principles of law and morality and justice to apply the maxim, falsus in uno falsus in omnibus.* What ground of judicial belief can there be left when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood."
>
> The Santissima Trinidad, 7 Wheat, 339.
> Dunlop *vs.* Patterson, 5 Cowen, 243.
> Huber *vs.* Teuber, 3 McArthur, 484.

See, also—

2 Elliott on Ev., sec. 955.

It will be claimed that the witness, having no pecuniary interest in the outcome of this suit, had no interest in testifying falsely as to the circumstances of the beginning of her relations with James Travers. This is incor-

rect; she had married her husband, O'Brien, as *widow* of James Travers. Surely she had the strongest possible motive to maintain on the stand that she had not voluntarily become and remained James Travers' mistress.

The testimony of the woman should thus have been rejected as wholly unworthy of belief, and with this out of the case there would not have been the slightest evidence that James Travers was ever married, except the recitals of his mutilated will of 1881 (Rec., 75), of his will of 1883 (Rec., 74), and of the mortgage deed of September 27, 1867 (Rec., 72).

The Deed and the Wills as Proofs of Marriage.

The mortgage, and the will of 1881, were both made in Maryland, where the "common law marriage," so called, is unknown, and a ceremony *in faciæ ecclesæ* is necessary to a valid union. Denison *vs.* Denison, 35 Md., 297

The will of 1883 seems to have been made in New Jersey, where a looser rule prevails, but where a *contract to marry* is as important as it is in Maryland.

The mortgage recital was made in 1867, when James Travers wanted credit, and had either to make such statement or excuse his refusal by stating the discreditable fact. The circumstances of the making of either will are not disclosed. Who wrote the last one, or who gave the draftsman his instructions is not shown. There is nothing but the bare statement above James Travers' signature that he was married. The suggestion that a presumption of truthfulness attaches to a will, is dissipated here by the fact that in the will of 1883, the statement that the woman is his wife is coupled with the falsehood that Annie is "our daughter."

Such declarations, as was said in Arnold *vs.* Cheeseborough, do not "make a marriage nor do they even, directly or affirmatively establish it" (46 Fed., p. 701).

We submit that without supplemental proof of reputation among neighbors and friends, the unsworn recitals of the mortgage and wills do not even tend to prove a marriage.

Baldwin *vs.* Maryland, 112 U. S., 490.
Barnum *vs.* Barnum, 42 Md., 251.

The auditor and the courts should have found there was no marriage in fact.

Reading Fire Ins. Co.'s Appeal, 113 Pa., 204.
Arnold *vs.* Cheeseborough, 46 Fed., 701.
S. C. affirmed, 58 Fed., 840.

No Proof of Repute as Wife.

The Court of Appeals had no basis in the evidence for the assertion in its opinion that "during the whole time he called her and introduced her as his wife, *and she was so recognized in the community generally. They removed to Point Pleasant, New Jersey, in 1883, and she was there recognized and reputed to be his wife until his death*" (Opinion, Rec., p. 206).

The only witness sworn was the woman. She certainly could not establish *her own repute* as married. To ask a witness his own reputation for truth and veracity, or for honesty, would be justly regarded as ridiculous. Is this less absurd? Moreover, she said nothing whatever of her life at Point Pleasant, before the death of Travers, and, of her life elsewhere, said only that Travers introduced her as his wife, and that she was called "Mrs. Travers" (Rec., 57). This falls far short of proving that "public recognition," which this court has declared "necessary as evidence of its existence," in the case of the marriage without ceremony or record.

Maryland *vs.* Baldwin, 112 U. S., 490, 495.

"By reputation as here used is understood the speech of the people who have an opportunity to know the parties."

Com. *vs.* Stump, 53 Pa. St., 132 (cited 112 U. S., 495).

"The testimony of a single witness is consequently held insufficient to establish reputation as husband and wife."

Com. *vs.* Stump, supra.
Jones *vs.* Hunter, 2 La. Ann., 224.
Taylor *vs.* Swett, 22 Am. Dec., 159, note.

As already shown the negative proof was strong that a contrary repute existed among the relatives of both parties.

Inferential Evidence Not Admissible.

Again, while these declarations are evidence from which, coupled with other proofs not found in this case, marriage *might under other circumstances be inferred*, there is no room for inference testimony that at an indefinite time and place a contract was made, when the parties *have selected a particular time and place for such contract.*

Cunningham *vs.* Cunningham, 2 Dow, 482.
Lapsley *vs.* Grierson, 1 H. L., 498.
Cram *vs.* Burnham, 5 Maine, 213.
Barnum *vs.* Barnum, 42 Md., 251.

In *Blackburn* vs. *Crawfords* this court condemned the line of reasoning which the Court of Appeals here adopted. Speaking of the instructions which authorized the jury to find a marriage from cohabitation and repute,

although they might not think a ceremony was had, as testified by the woman, this court said (3 Wall., p. 194):

> "They submitted to the jury, as a question to be considered, whether there was not a marriage at a different time and place and contracted in a different manner from that alleged by the putative wife, Elizabeth Taylor. Her testimony was clear and positive. It was wholly inconsistent with such a proposition. If there was none such as alleged by her, clearly there was none at any time. This was the hinge upon which turned the controversy. All the testimony clustered about and related to that inquiry. The jury should have been so instructed, and their deliberations confined accordingly. . . .
>
> "The further inquiry did not arise in the case. What was said could hardly fail to mislead and confuse. It permitted them to substitute conjecture for deduction, and opened a field beyond the sphere of the case, where the means of error were abundant."

This case, then, must turn upon the question whether there was a valid marriage between James Travers and Sophia Grayson at Alexandria, Va., on August 15, 1865.

The Virginia Marriage Law; License Necessary.

The Virginia statute of 1849, regulating marriages in that State, and in force in August, 1865, the time of the supposed marriage between James Travers and Sophia Grayson, provided as follows:

> "Section 1. Every license for a marriage shall be issued by the clerk of the court of the county or corporation in which the female to be married usually resides. . . .
>
> "Sec. 2. Every license so issued shall be registered in a book to be kept by the clerk for that purpose.
>
> "Sec. 3. [Has no application.]

"Sec. 4. When a minister of any religious denomination shall, before the court of any county or corporation in this State, produce proof of his ordination, and of his being in regular communion with the religious society of which he is reputed a member, and give bond in the penalty of fifteen hundred dollars, such court may make an order authorizing him to celebrate the rites of marriage.

"Sec. 5. The court of any county which deems it expedient, may appoint one or more persons resident in such county to celebrate the rites of marriage within the same, or a particular district thereof, and upon any person so appointed giving such bond as is required of an ordained minister, may make a like order authorizing him to celebrate the rites of marriage in such county or district, as the case may be. Any order made under this or the preceding section may be rescinded at any future term.

"Sec. 6. Marriages between persons belonging to any religious society which has no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society.

"Sec. 7. Every marriage in this State shall be under a license and solemnized in the manner herein provided, but no marriage solemnized by any persons professing to be authorized to solemnize the same shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of authority in such persons if the marriage be in all other respects lawful and be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

"Sec. 8. [Has no application.] "

This statute required that in all cases a license should issue and without it there could be no valid marriage. The emphatic decision of the Court of Appeals of Virginia, delivered in 1901, would foreclose

discussion on this subject were it not for the ground taken by Mr. Justice Gould, in sustaining as a marriage the union under discussion.

Offield *vs.* Davis, 100 Va., 250.
Beverlin *vs.* Beverlin, 29 W. Va., 732.

The View of Justice Gould (Rec., 193, 200).

Justice Gould held correctly that the laws of Virginia must control the question of marriage, but he misapplied the terms of the statute.

The statute, after providing by whom marriages may be solemnized to give them validity, seeks to protect the parties from the *false assumption of authority as minister or magistrate*, but the want of authority *in the person* does not dispense with the license. Justice Gould's holding is (Rec., 198), that because the person supposed to have performed the ceremony was not an authorized person, *therefore* the marriage was valid, without license. This leads to the absurd result that a marriage without license by one who is in fact parson, priest, or authorized magistrate is invalid, *while such ceremony performed under precisely similar conditions by an impostor, is valid.* The proposition will not bear argument for an instant, and there is no legal decision to sustain it. The statute reframed so as to express this idea would be as follows:

Every marriage in this State shall be under license, except where performed by an unauthorized person.

It is clear that the "want of authority" mentioned in the statute does not mean absence of a license to the parties, but means "defect in the ordination of the minister or the commission of the justice in whose presence the marriage ceremony was performed."

Com. *vs.* Munson, 127 Mass., 459, 466.

The cases cited by the judge (110 Mass., 314 and 52 N. J., 207), have no bearing on the question. Both involved the Massachusetts statute, which *did not require a license*, and contained express provisions to save marriages in good faith before an officer, or minister, or a person acting as such from invalidity because of informalities in the manner of the ceremony, or lack of authority in him who officiated. In the first case the parties appeared with serious "intent on the part of both to contract marriage," before a justice of the peace, and both believed that they were lawfully married by him, and thereafter cohabited as husband and wife; his testimony that he did not understand that he married the parties at that time, and that all that was said by either was that the plaintiff introduced the woman as his wife," was admitted, but it was held that this misunderstanding of the effect of what was said and done could not invalidate the marriage. The second case is equally inapplicable.

The Virginia Decision Conclusive that Without a License there could be No Marriage in that State.

> "The construction given to a statute by the highest judicial tribunal of such State, is regarded as a part of the statute and is as binding upon the courts of the United States as the text" (of the statute).
>
> Leffingwell *vs.* Warren, 2 Black, 599, 603.
>
> Green *vs.* Lessee of Neal, 6 Peters, 291.
>
> Bauserman *vs.* Blunt, 147 U., S. 652.
>
> Meister *vs.* Moore, 96 U. S., 82.
>
> Fairfield *vs.* County of Gallatin, 100 U. S., 47, 52.

While there are exceptions to the rule that "this court ollows the adjudications of the highest courts of the

State, whatever may be our opinion of its original soundness," (Walker *vs.* State Harbor Commissioners, 17 Wall, 648), this case does not fall within them. Such exceptions are (*a*), where rights of property have been acquired under former contrary decisions of either the State or Federal courts; (*b*), where on the same transactions the Federal court has first passed, and this court approves that decision and disapproves the State decision; and, (*c*), where general questions of commercial law are involved. Such are the cases of Pease *vs.* Peck, 18 How., 595; Burgess *vs.* Seligman, 107 U. S., 20, and Julian *vs.* Cent. Trust Co., 193 U. S., 95.

The weight or authority of the decision is not affected by the fact that it was made after the supposed marriage, and after the persons affected by it had left the State.

Bloodgood *vs.* Grasey, 31 Ala., 575.

We submit, then, that Offield *vs.* Davis settles the question as to the status of these parties in Virginia, and that it must be held that no license to marry having been issued to James Travers and Sophia V. Grayson, the alleged ceremony in Virginia, if performed, gave them no status as married persons in that State, and their cohabitation in that State was unlawful.

A Marriage Void Where Celebrated is Void Everywhere.

> "If by the law governing at the place where the marriage is celebrated, whether between domiciled or transient parties, it is invalid, *it is so also in every other place or country*, no court giving to any foreign transaction or contract a validity withheld from it by the law under which it was

made. This rule is substantially without exception."

Bish. on Mar. Div. & Separation, sec. 886.
Story, Confl. of Laws, pp. 215, 216, 217.
Patterson *vs.* Gaines, 6 How., 550, 587.
Phillips *vs.* Gregg, 10 Watts, 168.
McDeed *vs.* McDeed, 67 Ill., 545.
Hutchins *vs.* Kimmell, 31 Mich., 126.
Dalrymple *vs.* Dalrymple, 12 Hagg. Consist., 58, 59.

English and American decisions of the greatest weight have many times illustrated this rule, from which there has been substantially no deviation.

The rule that a marriage invalid where celebrated is invalid everywhere, is but an example of the general rule governing all contracts.

"A contract of any kind void in the State or country where made is void everywhere. If there are cases in apparent exception to this rule they are not really so, for, from the nature of the rule, it, like its counterpart, does not admit of exception."

Bish. on Contracts, sec. 1383.

"Whatever goes to the substance of the obligation and affects the rights of the parties, as growing out of the contract itself, or inhering in it, or attaching to it, is governed by the law of the contract."

Pritchard *vs.* Norton, 106 U. S. 124, 129.
Wolf *vs.* Johnson, 10 Wheat. 367.
Scudder *vs.* Union Nat. Bk., 91 U. S. 406.
Rich *vs.* Hyatt, 3 McArthur, 536.

That the so-called marriage in Virginia did not create a lawful relation of husband and wife was conceded by the auditor (Rec., p. 85), and by the Court of Appeals

(Rec.,p. 207), and was denied by Judge Gould only because of his misconstruction of the proviso in section 7 of the statute as pointed out.

II.

By What Act, and When and Where Did the Unlawful Cohabitation of These Persons Become Marriage?

1. If the woman who claims to be the wife of James Travers is to be held sufficiently credible to justify the court in receiving her testimony as proof of the facts to which she testifies, this testimony proves the following facts as to the domicile of herself and James Travers after what took place on August 15, 1865, at Alexandria, Va., in the way of a marriage ceremony; that is to say, the only domiciles which they acquired were (1) in the State of Maryland, which was their domicile from the latter part of the year 1865, or the early part of the year 1866, up until some time in the year 1883, and (2) thereafter a domicile, for a few months, in 1883, in New Jersey, and which lasted until the time of his death in October, 1883.

For, although she says that immediately after the ceremony in Alexandria, they went to a hotel on the Shrewsbury River (which is in New Jersey, although she speaks of it as being in New York), they remained there only three or four weeks (Rec., p. 62), going from thence to the City of Washington, remaining there three or four weeks, and thence to the City of Baltimore, where they remained until late in the year 1865, or early in the year 1866, and then took up their residence for approximately two years in Bel Air, Harford County, Maryland; removing thence to Talbot County, where they purchased a farm and lived until some time in the year 1883, and, upon the failure of the health of James Travers, they sold their property there and went to Point Pleasant,

N. J., to live, where he died in October, 1883. The visits to Shrewsbury and to the City of Washington are thus plainly shown to be merely transient visits, made after the marriage ceremony, which took place in Alexandia, Va., preparatory to settling down in Maryland for their residence (Rec., pp. 54 and 62 to 65).

2. As heretofore shown in this brief, what took place in Virginia on August 15, 1865, resulted in no valid marriage between James Travers and Sophia V. Grayson; the absence of a license rendering what took place there (even if the testimony of the woman is to be credited as to what did take place), under the laws of Virginia as authoritatively adjudicated by its highest court in 100 Va., p. 250, Offield *vs.* Davis, absolutely null and void to effect a marriage between the parties; they, therefore, departed from this pretended ceremony as completely a single man and a single woman as if the ceremony had never taken place. This condition of things followed them to Shrewsbury, New Jersey, and to the City of Washington. Whatever cohabitation took place between them in these places was therefore not a matrimonial cohabitation,but was an unlawful and meretricious cohabitation, whatever may be the law as to the requirements of valid marriage, either in New Jersey or in the City of Washington; for there is no pretense that during this interval any new agreement of marriage was entered into between the parties, and whatever cohabitation took place between them in this interval took place because of, and is to be referred to, the invalid transaction which took place between them in Alexandria, Va.

Not only is there no pretense made in the testimony of the woman that their cohabitation grew out of, or was because of, anything else than the ceremony which took place at Alexandria, but she distinctly states that she did not discover that the person who performed the ceremony (and as to whom she says she was under the im-

pression that he was a minister) was not a minister, until some five years after the ceremony had been performed (Record, pp. 56-57).

It can not admit of controversy, therefore, that when James Travers and Sophia V. Grayson took up their residence and acquired their domicile in the State of Maryland in 1865 or 1866, no marriage status existed between them; he was a single man and she was a single woman, and though they were cohabiting together, their cohabitation was not matrimonial, but was unlawful because it was referable only to the pretended marriage ceremony which took place in Virginia, and not under any new contract of marriage entered into thereafter before going into Maryland, even if such subsequent contract could validly constitute them husband and wife.

3. Furthermore, as by the law of Maryland, no valid marriage could be entered into in that State unless celebrated by a religious ceremony; and as the witness states that there never was any ceremony of marriage performed between her and James Travers except the one in Alexandria, Va. (Rec., p. 57), it necessarily follows that none of the cohabitation which took place between James Travers and Sophia V. Grayson during their residence and domicile in Maryland, was a matrimonial cohabitation, but was unlawful and meretricious during all of the time during which this residence and domicile continued from 1865 or 1866, up to their departure from Maryland some time in the year 1883.

Therefore, all of the testimony of the woman that during their life in Maryland she lived with James Travers as his wife, that she was recognized by him as his wife, that he introduced her as his wife, and that she was received and treated splendidly, is altogether immaterial and ineffective as proof of a valid marriage; equally ineffective for this purpose is the fact that she joined with him in the deed of mortgage of the land purchased by

him in Talbot County (Rec., p. 72), and the fact, if it is a fact, that he executed the will produced in a mutilated form by the witness and bearing date February 8, 1881 (Rec., p. 75).

Dennison *vs.* Dennison, 35 Md., 361.
McLaughlin *vs.* Barnum, 42 Md., 297.
Richardson *vs.* Smith, 80 Md., 89.

In the *Dennison* case there was no claim of a ceremonial marriage, but it was alleged and the court assumed, that from January, 1863, until the death of the man in 1870, the parties lived as husband and wife, having mutually agreed to be and regard each other as such; the woman was maintained and supported by the man to the time of his death as his wife, and they both acknowledged, recognized and acted toward each other as husband and wife, and were known, treated and reputed to be such among their friends snd acquaintances (pp. 370, 371)

The court, after a most careful study of the laws of marriage, held this union to be no marriage, and that in Maryland "to constitute a lawful marriage some religious ceremony must be superadded to the civil contract."

4. When, therefore, James Travers and Sophia V. Grayson transferred their residence and domicile from Maryland to New Jersey some time in 1883, they entered that State not in the condition of man and wife, but as a man and a woman living and cohabiting unlawfully together. Being, therefore, in this condition when they took up their residence and domicile in New Jersey, it necessarily follows that this same condition existed at the time of his death on November 1, 1883, *unless it is satisfactorily established by credible proof in the case*, that a new agreement of marriage, *valid under the laws of New Jersey*, was entered into between the parties, *after they established their domicile in New Jersey*.

5. In determining this question we admit that it is the

established law of New Jersey that neither a license from the State nor a religious ceremony is necessary to constitute the creation of the status of marriage between a man and a woman; but that all that is needed to create a valid marriage status is that the man shall declare, in words of the present tense, that the woman is his wife, and that the woman shall assent.

52 N. J. Law, 208, Smith *vs.* Smith.
62 N. J., 401, Atlantic City R. R. Co. *vs.* Goodin.

6. We submit that when all the testimony is considered in the light of the principles applicable to the subject established by the highest court of New Jersey it can not be found that any new agreement of marriage was entered into between James Travers and Sophia V. Grayson after they took up their domicile, in 1883, in New Jersey.

(*a*) We will first examine her testimony so far as it is applicable to the question which we are now considering.

She gives an account of the marriage ceremony in Alexandria on August 15, 1865, her temporary sojourn at the hotel on the Shrewsbury River, and in the city of Washington, in Harford and Talbot counties in Maryland (Rec., 54), the still-birth of two children, and the birth thereafter of two other children, Ida and Annie (the former of which died before she grew up and the latter being still living). She further testifies of the discovery by her, some five years after her marriage, of the fact that the person who performed the ceremony in Alexandria was not a minister; she then says that she always lived with Mr. Travers as his wife, but that no other ceremony of marriage was ever performed between them (Rec., 57).

She was also asked:

> "Q. In the various places in which you lived with Mr. Travers, and to which you have already testified, were you regarded in the community as his wife?"

This question being objected to by counsel, was not answered.

She was then asked:

> "Q. How did Mr. Travers regard you in that relation?"

Her answer is:

> "A. Why, as his wife."

She was further asked:

> "Q. How did Mr. Travers introduce you in the *community* in which you resided?"

Her answer was:

> "A. Always as his wife; I have old friends who live in *Talbot County and in Bel Air (Maryland)* who would prove that if it was necessary" (Rec., 54 to 57).

She was asked on cross-examination (pages 65 and 66) as to her residence in Talbot County, Maryland, and as to that residence she said she was always treated splendidly and received everywhere, had the very best friends and acquaintances, and always stood well with them. She further identified as those of James Travers the signatures to the papers offered in evidence by the appellees; that is to say, the mortgage from herself and Travers to Banning (Rec., 72), the mutilated will of 1881 (Rec., 75), and also the will bearing date October 5, 1883 (Rec., 129), in which are made devises and bequests to his wife without naming her.

(b) *It will be observed that of the above-mentioned documents the only one which was executed after James Travers took up his residence and domicile in New Jersey in 1883 was the will bearing date October 5, 1883.* It will also be observed that while she says she always lived with Mr. Travers as his wife, she, when asked

how he *introduced* her in the *community* in which they resided, said, "Always as his wife." She accompanies the declaration by saying, "I have old friends who live in Talbot County and in Bel Air, who would prove that if it were necessary."

Her testimony, therefore, fairly considered upon the subject of how she was introduced, is to be interpreted as limiting this introduction while she was a resident of Maryland.

The Cohabitation in New Jersey.

The record shows little of the residence in New Jersey. The woman says only that they went there for the benefit of Travers' health, and purchased property—all else is left to conjecture (Rec., 57, 62, 65).

We quote in full what she testified as to this matter, and there was no other testimony upon the subject:

> P. 57. "We lived at Point Pleasant. We sold our farm in Talbot County in 1883, on account of Mr. Travers' health failing, and then we went to Point Pleasant and purchased property there, and after his death I remained there ever since."
>
> P. 62. ". . . and from Talbot we went to Point Pleasant."
>
> P. 65. "Q. Then you went to Talbot County? A. Yes, and lived there continuously until Mr. Travers' health failed, and he thought the seashore would do him good, and we went to Ocean County, Point Pleasant, New Jersey. . . . Yes, went there to reside in 1883."

6. But assuming, *ex gratia argumenti*, that they cohabited as man and wife; that she was treated and acknowledged as his wife after they took up their residence in New Jersey, such cohabitation and acknowledgment did not constitute the marriage status between them; at the best, *and in the absence of evidence as to the real facts*, they would be only *prima facie* evidence that a mar-

riage had *theretofore* taken place between them. For it is well settled that cohabitation, acknowledgment and reputation do not *create* the marriage status, but that they are only facts from which, *under certain circumstances*, a *prima facie* presumption arises that theretofore a marriage had taken place between the parties; that is, that the union was from the first lawful.

> "There can be no doubt that cohabitation and reputation will under some circumstances justify a presumption of marriage. They do not constitute marriage, but may in a case where no *actual marriage, legal or illegal* is shown, and where nothing appears in the conduct of the parties to indicate that their relations were illegal rather than matrimonial, justify the court in presuming that the parties originally came together, mutually promising to take each other for husband and wife during their joint lives."
>
> 46 N. J. Equity, 413, Voorhees *vs.* Vorhees.
> 52 N. J. Law, 208, Smith *vs.* Smith.

7. We now submit that the cohabitation between James Travers and Sophia V. Grayson, after they removed to New Jersey in 1883, can not, under the facts and circumstances proved in this case, create any presumption that a new contract of marriage was entered into after their entry into the State of New Jersey, for the reasons now to be stated.

8. In the following discussion of the question of whether James Travers was ever validly married to Sophia V. Grayson in New Jersey, we shall *first* assume that both James Travers and Sophia V. Grayson believed what he told her; that is to say, that, in consequence of what took place in Alexandria, they were validly married.

(*a*) As we have already seen, if the testimony of Sophia V. Grayson is to be credited, the cohabitation

between her and James Travers originated in the marriage ceremony which took place in Alexandria, Va.; that about five years thereafter, she discovered that the person whom she supposed to be a minister, and who performed the marriage ceremony, was not a minister, but simply a friend of James Travers. This fact became the subject of an interview between them; she was asked what she said, and her testimony is as follows:

> "Q. After you discovered, some four or five years after you went to live with Mr. Travers, that you had not been married to him according to any ceremony, did he ever make any promise to you in that regard?"
>
> "A. Always, poor fellow; he would have it all right."
>
> "Q. And what did he say?"
>
> "A. Well, he would always say that it was all right, and we were just as much married as if we had been married before a priest or a minister."

She had previously testified that from the time of the marriage ceremony up to the discovery above mentioned she always lived with Mr. Travers as his wife.

(*b*) Having thus begun their cohabitation upon the strength and because of the marriage ceremony in Alexandria, and continued it thereunder during the four or five years that elapsed before she discovered that the person who performed the ceremony was not a minister, (which discovery was made while they were living in Maryland), it is entirely clear, if her testimony is to be credited, that the cohabitation in Maryland after the discovery, was continued by virtue of the marriage ceremony which took place at Alexandria; because James Travers claimed, and she assented to the claim, that though the person who performed the ceremony was not a minister, the marriage was just as valid as if he had been a priest or a minister.

(*c*) It is affirmatively testified by her that there was no other ceremony of marriage performed in addition to the Virginia ceremony (Rec., 57).

Upon the assumption above stated (par. 8 of this brief), nothing could more strongly show that all of their cohabitation in Maryland as husband and wife, and whatever introduction by him of her in this character took place, were all founded upon, and are to be referred back to the ceremony which took place in Alexandria; and that the parties, while they lived in Maryland, did not entertain the thought that there was any reason or necessity for the making of any new contract of marriage, or having any further marriage ceremony to perfect their marriage status; and that they continued, during the 17 years of their residence in that State, to let their marriage rest upon what had taken place in Alexandria, and do nothing more of any kind to perfect it.

It is, therefore, impossible to suppose that when they left Maryland in the year 1883, because of James Travers' health, and went to live at Point Pleasant in New Jersey, the transfer of their domicile was accompanied by any new agreement between them for entering into the marriage relation. It is inconceivable, if they really intended to be husband and wife in Maryland, and did not consider what had taken place in Alexandria sufficient for the purpose, that they would not have had a new ceremony performed and in such manner as to make them husband and wife in Maryland.

If it be true, therefore, that during their long residence in Maryland they did not consider it was necessary to have any further ceremony of marriage, and cohabited together as man and wife, and she was acknowledged by him as his wife, it is inconceivable that when they transferred their residence to New Jersey for a few months

before the death of James Travers, (which transfer was owing altogether to the supposition that his health would be benefited by the transfer), the thought entered into their minds that they would, or must, enter into a new contract of marriage upon going into New Jersey. There is, of course, no pretense in the testimony of Sophia V. Grayson, that any such contract was entered into. Upon the contrary, she said no new marriage ceremony took place; this must mean that no new contract of marriage was made (47 N. J. Eq., 555).

Moreover, it is impossible to suppose that any new contract of marriage would be entered into between the parties (upon the assumption upon which we are now discussing the case), as neither of them can be supposed to have known that there was any necessity for such contract or any reason for entering into it.

(*d*) The necessary conclusion from the foregoing is that all the acts of James Travers or the woman claiming to have been his wife, after they went into New Jersey, whether a cohabitation or acknowledgment by him of her as his wife, took place on the basis of the original transaction between them in Alexandria, Va., on August 15, 1865, and none of these acts can therefore be considered as evidence that after they went into New Jersey a new contract of marriage was entered into between them.

9. In the light of the foregoing, we refer the court to the principles applicable thereto as established by the decisions of the New Jersey courts.

It is the settled law of New Jersey, as it is of other jurisdictions, that the validity of what took place in Virginia on the 15th of August, 1865, to constitute James Travers and Sophia V. Grayson man and wife, is to be determined by the law of Virginia at the time of the transaction, and that if by that law there was no valid

creation of the status of husband and wife, nothing that took place there created that status between them in any other State or jurisdiction.

Clarke *vs.* Clarke, 52 N. J. Equity, 650.
Smith *vs.* Smith, 52 N. J. Law, 208.

Therefore, as by the statute law of Virginia as authoritatively determined by its highest court (as heretofore shown) what took place in Virginia on August 15, 1865, did not create any marriage status between James Travers and Sophia V. Grayson, it necessarily follows that unless a marriage status was created between the parties above named after they went into the State of New Jersey in 1883, by a valid contract there entered into between them to be and become husband and wife, she was not his wife at his death in October, 1883.

10. It has been adjudged as the law of New Jersey, that mere proof of cohabitation as man and wife, by a man and a woman, and the acknowledgment of each other as husband and wife before the world, does not create the marriage status between them; and that where it is in proof that no marriage ceremony has taken place between the parties, then proof of cohabitation as man and wife will not prove that a marriage has taken place between them, but in such a case it is necessary that there should be proof of a contract of marriage, assented to by both parties, entered into between them.

Goldbeck *vs.* Goldbeck, 18 N. J. Equity, 42.
Smith *vs.* Smith, 52 N. J. Law, 208.

If, therefore, we are right in our contention as above made that under the facts and circumstances of this case it is impossible for the court to find that any contract of marriage was entered into between James Travers and Sophia V. Grayson after they entered the State of New Jersey, it necessarily follows that they were not man and

wife at the time of the death of James Travers, inasmuch as no status of marriage between them was created by the proceedings in Virginia and during all of their life in Maryland they had been living without being husband and wife, and, therefore, in unlawful and meretricious relations.

11. Wherever it has been shown that an actual marriage ceremony has taken place, though it be an illegal one, and it is shown that the cohabitation and acknowledgments took place in pursuance of this ceremony, the subsequent cohabitation, acknowledgment, and reputation of the parties will he considered as having had their origin in such marriage ceremony, and will not justify a presumption that the parties contracted a subsequent marriage.

Voorhees *vs.* Voorhees, 46 N. J. Equity, 414, 415, and 416.
Cartright *vs.* McGown, 121 Ill., 401 and 402.
Randlett *vs.* Rice, 141 Mass., 394.
Wallace's Case, 49 N. J. Law, 535.
Pearson *vs.* Hovey, 6 Halst, 23.

The well-established rule is that when an abortive attempt is made to prove a marriage at a fixed time and place parties will not—

"be permitted to rely upon other facts and circumstances as a ground of presumption that a marriage *may* have taken place at some different time and place."

Barnum *vs.* Barnum, 42 Md., 251, 297.
Blackburn *vs.* Crawfords, 3 Wall., 175.

This rule was most clearly stated by the Supreme Court of Pennsylvania, a State which gives effect to the agreement *per verba de presenti.*

"When the relation between a man and woman living together is illicit in its commencement, it is

presumed to so continue until a changed relation is proved. Without proof *of subsequent actual marriage, it will not be presumed from continued cohabitation and reputation* of a relation between them which was of illicit origin."

Appeal of Reading Fire Ins. Co., 113 Pa. St., 204.

See, also, Hunt's Appeal, 86 Pa., 294,

Lapsley *vs.* Grierson, 1 H. L., 498.

Cunningham *vs.* Cunningham, 2 Dow, 482.

As already shown, the decision of this court in Blackburn *vs.* Crawfords (3 Wall., 194), directly condemns such reasoning as that indulged in by the Court of Appeals in this case, and rejects presumptive evidence where an attempt to prove a valid ceremony has failed.

To the same effect are many State decisions.

Cartwright *vs.* McGown, 121 Ill., 388.
O'Gara *vs.* Eisenlohr, 38 N. Y., 296.
Rose *vs.* Rose, 67 Mich., 619.
Williams *vs.* State, 44 Ala., 24.
Jones *vs.* Jones, 45 Md., 144.
Williams *vs.* Williams, 46 Wis., 464.

The Voorhees case above cited came on appeal before the Court of Errors and Appeals in 1890 (Collins *vs.* Voorhees, 47 N. J. Eq., 555) and was affirmed, Chief Justice Beasley delivering the opinion. On the facts the case is nearly in point. Voorhees had obtained a fraudulent divorce from his wife, and thereafter married a second time, the so-called second wife being ignorant that the divorce was void. Subsequently the first wife obtained a divorce. Voorhees continued to cohabit with his second wife and treated her before the world as though he were married to her until he died.

"It was urged that such cohabitation formed the basis of an inference that there had been an

> interchange of consent to marriage after the dissolution of the first marriage."

The court rejected this inference and held—

> "that an interchange of consent was not to be deduced from cohabitation accompanied with matrimonial habit and repute, in a case wherein it appeared that the parties had been living together as husband and wife by force of a ceremonious marriage, to which as a valid act one of the parties, in point of fact, had not consented."

The court found that what Voorhees—

> "did consent to was to deceive the so-called second wife and to live with her with the appearance of being married to her; he did not consent to marry her in any legal sense whatever. Under these circumstances . . . his continued cohabitation with this woman, after the obstacle to their marriage had been removed, did not prove that he had changed his original intent, which was to live with her without being legally married to her. It was deemed that cohabitation with habit and repute being accompaniments of the original *status* could not *per se* be taken as proof that a new *status* had been agreed to by the parties."

In the Voorhees case, as in the case at bar, the woman was asked while testifying: "Was any other marriage ceremony ever performed in which you and Abraham Voorhees were the contracting parties?" And answered, "There was not." The court, commenting on this, said:

> "She made no pretence of any other interchange of consent to marriage between herself and the man she cohabited with except such as had been given at the time of their ceremonious nuptials. Most certainly this evidence, if we apply to it the ordinary legal tests, is entirely conclusive, and absolutely proves that there never was any second marriage, in any form whatever, between these

parties. It is to be borne in mind that cohabitation with matrimonial habit and repute is, standing alone, nothing more than testimony in proof of marriage; the conduct of the persons to whom it relates does not constitute marriage, and, consequently from its evidential nature, it is liable to be rebutted by other proofs."

It appears quite certain from the New Jersey decisions that the courts of that State would refuse to find that James Travers and Sophia Grayson were ever husband and wife, and would hold that their cohabitation in that State is wholly without probative force in view of what is shown as to the Virginia ceremony and the Virginia laws.

The true doctrine is that cohabitation and reputation do not constitute marriage, but are evidence upon which in proper cases a presumption of marriage may be founded.

Clark *vs.* Clark, 52 N. J. Eq., 650.
Smith *vs.* Smith, 52 N. J. Law, 208.
Goldbeck *vs.* Goldbeck, 18 N. J. Eq., 42.
Williams *vs.* State, 44 Ala. 24.

In the Alabama case cited the court said:

"Cohabitation, though evidence of marriage, can not make a void marriage valid."

And the Wisconsin court said (46 Wis., 464):

"And in order to establish a marriage subsequent to the commencement of such unlawful and meretricious conduct by continued cohabitation, conduct, and declarations of the parties, or by reputation, there should be some affirmative evidence showing that the relations of the parties were changed, and that that which was meretricious and unlawful in its commencement had been rendered lawful."

In the case at bar there is no evidence that the relations of the parties were changed at any time.

12. In paragraph "8" of the preceding discussion, we said that we would, *first*, assume that both James Travers and Sophia V. Grayson believed what he told her; that is to say, that in consequence of what took place in Alexandria, they were validly married, but if her evidence is to be taken at all it shows that he never believed that there was any legal marriage between them, and that she was aware of the fact that no legal marriage had taken place, at least as early as four or five years after they began to live together, if not before.

In view of the declarations made by her to Mr. Colbert (Rec., 70), when he was inquiring of her with a view of determining whether an amended answer should be filed on behalf of his clients, setting up a marriage by James Travers with this woman, that no ceremonial marriage had taken place between her and James Travers, but that they had lived together as man and wife, it is altogether questionable whether any ceremony of any kind ever took place in Alexandria.

But, assuming that the ceremony testified to by her did take place, then, according to her testimony, some four or five years after the ceremony in Alexandria (Rec., 56–57) she ascertained that the person who performed the ceremony in Alexandria was not a minister at all, but a *Washington friend* of James Travers, and that they were then both told by this Washington friend "*that they were not married*, and *he begged James Travers to do what was right.*" Both of them must have understood by this declaration that in order to constitute themselves husband and wife it would be necessary for them to have a proper marriage ceremony performed, valid under the laws of the State in which it took place, and accompanied by all other things made requisite by that law. The reply of James Travers was,

"that it was all right, and they were just as much married as if they had been married before a priest or a minister." Therefore, in the face of the declaration by the man who had pretended to perform the ceremony of marriage, that *nothing that had taken place then had made them man and wife*, and that they were, at the time of this conversation, cohabiting without being man and wife, they both determined that they would do nothing to make that a valid marriage, but chose to continue their cohabitation without doing anything to make themselves man and wife. Certain it is that James Travers, at least, knew from the beginning that what had taken place in Alexandria was but a mockery of marriage (even if any ceremony of any kind did take place in Alexandria), for he procured a person who was an old friend of his in Washington, and who, of course, he knew not to be a minister, to pretend that he was one. Having thus deliberately conceived this fraud, the court is entirely justified in also believing that he knew what was so easily to be ascertained; that is to say, that a license was required under the laws of Virginia. But from the beginning he determined to defy all obligations of the law, and entered into what he knew to be illicit relations with Sophia V. Grayson; and in this agreement to defy the law, she concurred from the period of time when she was informed by the person who had performed the marriage ceremony, *that they were not legally married.*

13. In this condition of things they continued to reside in Maryland for some twelve years thereafter.

In Maryland they could only acquire the marriage status by a religious marriage ceremony; and yet they refused to have such ceremony performed. When, therefore, they transferred their domicile for a few months into New Jersey, they went there with the knowledge that they had been living together all these years without the sanction of a legal marriage.

In this connection, and in order to show the character of life he was leading, we refer to the testimony with reference to the parentage of the two girls Annie and Ida, who, while they were his children, *were not hers*, as she finally admitted under oath in her testimony given at Philadelphia (Rec., 51); although when examined in Washington she had not only testified under oath that both of them were her children by James Travers, but *gave the time of their birth*, the *street and the number of the house in New York* in which they were born, and the names of the respective midwives who had attended her when she gave birth to them. She admitted in Philadelphia, that the mother of Annie was a young girl of 15, and *that she was present when the child was born*. In her testimony in Philadelphia, while admitting that she had sworn falsely as to Annie and Ida being her children, she gave as her *only excuse* for her *false oath*, her desire to *shield Annie;* but this does not in any way explain why she should take a false oath in reference to the motherhood of Ida. Moreover, her testimony that Annie was her child by James Travers, was a very material fact if she and James Travers were married, in reference to the construction of the will of Nicholas Travers.

14. If we are correct in our contention that James Travers knew that he had defied the law in reference to the requirements of a legal marriage with Sophia V. Grayson, then even if she was not a party to this defiance of law, it is very clear that all cohabitations between the parties, and any acknowledgments by him of her as his wife in New Jersey, can not in any way be considered as evidence of any legal contract of marriage made between them in New Jersey, even if it could be contended that it would be otherwise, if they both in good faith believed that what took place in Virginia (if it did take place) made them lawfully husband and wife.

Never having been husband and wife in Maryland, and

knowing that while they cohabited there together as husband and wife, and acted towards each other as if they were husband and wife, with the knowledge, at least on his part, and in all probability on her part, they were so doing in defiance of the requirements of law, the continued cohabitation and acknowledgment of each other as husband and wife in New Jersey for the few months of their life there, can not be held as evidence of any contract of marriage made between them in New Jersey, or of any intention on their part to change the actual status of their relations as it existed when they went into New Jersey. The status which existed in Maryland continued in New Jersey.

Certain it is that while they lived in Maryland, neither their cohabitation as man and wife, nor the acknowledgment by him of her as his wife, whether orally or in the mortgage or in the will of 1881, offered in evidence, operated in any way to convert their unlawful relations into a legal status of marriage. There can not, in the nature of things, be any reason why the same character of acts taking place across the New Jersey line should have the effect of creating, under the circumstances of this case, the status of a valid marriage.

In support of our contention, we refer the court to the following cases:

Voorhees *vs.* Executors of Voorhees, 46 N. J. Equity, 413.

Collins, Guardian, etc., of Voorhees, *vs.* Voorhees, 47 N. J., 555.

Cartwright *vs.* McGown, 121 Ill., 401 and 402.

Atlantic City Ry. Co. *vs.* Goodin, 62 N. J. Law, 400.

The cases in this court of Meister *vs.* Moore, 96 U. S., 76, and Maryland *vs.* Baldwin, 112 U. S., 490, will be cited to support our opponent's contention that from cohabitation the court will assume marriage, but these cases

are not against us. In the first a Michigan marriage was in question and this court, finding that the Supreme Court of Michigan had held a contract of marriage *per verba de presenti* valid under the laws of that State, held that this concluded the subject, saying: "That construction must be controlling with us" (p. 82). In *Maryland* vs. *Baldwin*, a Pennsylvania marriage was in question, and the court was guided by the decisions of that State.

The Law of Status of Persons.

In complete harmony with the rule that the validity in any State of a marriage will be referred to the law of the place where the alleged marriage occurred, is the law for determining the status of persons. This must be decided by reference to the law of the State or country *where such status or condition had its orgin, and the status so ascertained adheres to the party everywhere.*

Ross *vs.* Ross, 129 Mass., 243, and cases cited.
Smith *vs.* Kelly's Heirs, 23 Miss., 167.

The English cases to this point are collected and reviewed in the decision by Gray, Ch. J., in the Massachusetts case.

So a person born before wedlock, who in the country of his birth is deemed illegitimate, may not, by a subsequent marriage of his parents in another country, by whose laws such a marriage would make him legitimate, cease to be illegitimate in the place of his birth.

Story, Confl. of Laws, secs. 93, 106.
House of Lords in Mauro *vs.* Saunders, 6 Bligh, 468.
Rose *vs.* Rose, 4 Wills & Shaw, 289.

We submit that the court should have held that James Travers did not leave a widow surviving him.

III.

The Supposed Agreement.

The first answers of the appellees (Rec., pp. 8, 9, 10, 11, 12, 13) to the original bill, set up in substance that *several years before the death of Joseph Travers*, which occured September 12, 1882, an agreement was entered into by *Joseph*, James, and Elias to the effect that their three sisters should be admitted to share with them in the estate devised by the will of Nicholas Travers, their father.

To these answers the complainants excepted, on the ground that they did not aver that the agreement alleged was in writing, as required by the Statute of Frauds. To these exceptions the defendants in question submitted, and they took leave to amend.

The amended answers (Rec., pp. 19, 20, 21, 23, 24, 25) aver that this agreement was made *shortly before the death of Joseph*, and that in December, 1882, it was—

> "*embodied in a written agreement*, wherein it was provided that in consideration of love and affection, and to avoid any more dispute and litigation, the several lots which had been devised to the said Joseph, James, and Elias should thereafter be considered freed from the trust provisions created by said will and codicils" (Rec., p. 23).

There are no "trust provisions" in the will, but it may be assumed from the recitals which follow this averment of the contents of the supposed writing, that by this language it is meant that the sisters were to share equally with James and Elias in all the property which by the will of their father was devised to Joseph and to James, and was covered by the "general provision."

The claim then is:

(*a*) That an agreement was entered into in the lifetime of Joseph.

(*b*) That this was reduced to writing and signed by James and Elias after the death of Joseph.

(*c*) That the agreement was based upon a certain and recited consideration.

(*d*) That it referred to the property held by Joseph and to other property held by James.

The Proofs.

There is no proof whatever that any writing of the kind in question was ever made. No witness testifies to having seen a paper of this nature, and no letter offered in evidence, competent or incompetent, declares that such writing was made.

One witness only was sworn on this point, a Mr. Stellwagen, of the firm of Thos. J. Fisher & Co., real estate agents, since 1878. His testimony proves only what is conceded, to wit: That after the death of Joseph Travers and beginning with May, 1883, the rentals from the properties devised to Joseph by his father's will, were collected by these agents and were distributed equally to Elias, James, and their three sisters. After the death of James, in October, 1883, the rents from his Washington properties, devised to him by his father, were distributed to Elias and his three sisters or their representatives. *To this one fact of the distribution of the rents, in the manner stated, for about seventeen years, neither the witness nor any of the papers thrust into the record adds in any way.*

Twelve letters from Mr. William B. Webb, attorney at law, to Mrs. Mitchell, will be found in the record (pp. 111 to 116). All were objected to as incompent, and the objection is yet insisted on, for they all appear to have been written by Mr. Webb to his client, Mrs. Mitchell, and the writer does not assume to speak for Elias or for James in what he writes. He does not mention James, nor

is it shown by any proof that he had any relations with James, or with Joseph. But if admitted, the letters prove nothing. Only two of them, we think, touch even remotely upon the matter in question. One of these, written to Mrs. Wynne, December 5, 1882 (Rec., p. 112), recites that Elias "admits after considering the matter" that Joseph's estate was his absolutely, and is to be shared by his brothers and sisters equally; and the other, addressed two days later, to Sister Mary Agatha Travers, recites that a legal opinion of the counsel for the Baltimore and Potomac R. R. Co. has declared that the property of Joseph descended to the brothers and sisters alike, subject to the widow's dower; that this opinion was submitted to Elias, "who consents to it," and has directed Mr. Webb to prepare a paper for all the brothers and sisters of Joseph to sign, which will put this conclusion in shape to be acted on (Rec., p. 113).

This is the end of the proofs of the agreement, alleged by the answers of the appellees to have been made for a consideration, and to have been reduced to writing, signed by James and Elias.

No letter from anyone declares or recites that the agreement *was ever written*, and we can only infer that Elias exercised his right to withdraw his concurrence in Mr. Webb's opinion, and declined to sign, or that no writing was ever drawn up. Such a document as is set up in the answers would be signed as well by the sisters as by the brothers, and, for such signatures, would have been sent them by mail with appropriate letters, but no letter of the kind is produced. If duly executed, Mr. Webb's first act would be to record the paper which passed rights in more than $200,000 of property. There is no such record.

But if everything contained in the letters be given effect as proof, the "agreement" set up has yet no support, for it is apparent from Mr. Webb's letters that his

only understanding with Elias Travers was upon the legal interpretation of the will as it affected the estate devised to Joseph. *There is no hint that the property held by James was referred to between them.* Neither is there a hint that there was an agreement for a consideration. Nor is there a syllable of evidence to prove the averment that such "agreement" was ever discussed in the lifetime of Joseph, or that it was ever known to James.

This defense, then, must fail for either of two reasons:

1st. The statute of frauds requires that such contract as is set up be proved by a writing. No writing is produced, nor is it shown that one ever existed.

2d. The allegations are not supported by the proofs. The variance between the allegations and the proofs is of itself enough to defeat the claim.

> "A party can no more succeed upon a case proved but not alleged than upon a case alleged and not proved."
>
> Foster *vs.* Goddard, 1 Black. (U. S.), 506, 508.
> Boone *vs.* Chiles, 10 Pet., 177, 208.

In the last case cited this court rejected all proof of a deed offered by defendants, because in their answer they had claimed under a contract to purchase, and had not averred a deed in consummation thereof.

The variance was not as great as in the case at bar.

Again: The agreement was averred by the answers to have been made, "in consideration of love and affection and to avoid any more dispute and litigation." Not a word of evidence of this was given. The only litigation over Nicholas Travers' estate was ended more than thirty years before.

The defense then should be rejected as not proved.

The Suggestion of Estoppel.

In the courts below the appellees claimed an estoppel upon the assertion of sole title by the heirs of Elias, because for about seventeen years the rentals were shared by the sisters. Except for the letters of Mr. Webb relating to the lands of Joseph, and reciting that Elias had yielded to his (Webb's) legal opinion that the title to those lands descended to all the heirs of Joseph, there is no explanation of this method of division. Whether it was due to generosity in Elias and James, then old men, for their sisters (one of whom appears to have been poor), or to a mistaken view of their legal rights is not explained. There can be no claim of a ripened right growing out of such division for twenty years, for *less than seventeen years* passed before the assertion by Elias' heirs of their claim of exclusive right in June, 1900, when the bill in this case was filed.

The claim of estoppel stands, then, upon the proposition that because the sisters and their children received for seventeen years rents which did not belong to them, but which they were permitted to receive, the title of the owners has passed to them by estoppel. It will be impossible to support this contention upon principle or by precedent.

Legal Essentials to Estoppel in Pais.

Where the estoppel relates to the title to real property it is essential that the party claiming to have been influenced by the conduct or declaration of another was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. *When the condition of the title is known to both parties, or both have the*

same means of ascertaining the truth, there is no estoppel.

Brant *vs.* Coal Co., 93 U. S., 326, 335, 337.
Shaw *vs.* Chambers, 48 Mich., 359.
Kingman *vs.* Graham, 51 Wis. 247.
Rose's Notes to U. S. Rep., vol. 8, p. 982, for collection of cases.

The doctrine of estoppel in pais always presupposes error on one side, and fault or fraud on the other, and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage.

Morgan *vs.* R. R. Co., 96 U. S., 716.
Merchants Bank *vs.* State Bank, 10 Wall., 604.
Brant *vs.* Coal Co., 93 U. S., 326.
Parker *vs.* Barker, 2 Met., 423.
Hill *vs.* Epley, 31 Pa. St., 331.
Hamlin *vs.* Sears, 82 N. Y., 327.
Martin *vs.* Angell, 7 Barb., 407.

> "Certain it is that to the enforcement of an estoppel of this character, such as will prevent a party from asserting his legal rights to property, there must generally be some degree of turpitude in his conduct which has misled others to their injury. Conduct or declarations founded upon ignorance of one's rights, have no such ingredient, and seldom work any such result."
>
> Henshaw *vs.* Bissell, 18 Wall., 255, 271.

One must have by fraud or culpable negligence *led* another into belief of a certain state of facts; and such fraud or culpable negligence must have been the proximate cause of that other acting upon such belief to his prejudice.

Leather Mfg. Bk. *vs.* Morgan, 117 U. S., 96–109.
Ency. Am. & Eng. Law, vol. 11, pp. 424–5–6.

If the letters of Mr. Webb be read all that will appear from them is that Webb persuaded Elias Travers that his (Webb's) construction of the "general provision" of the will of Nicholas Travers was correct, and that because Joseph Travers left a wife, all his heirs at law were entitled to share the particular lands. To this opinion Elias Travers relunctantly yielded, as Mr. Webb states, and from the fact that James apparently acquiesced in the subsequent division of rents from the property on that basis, it may be assumed that Elias convinced him that the claim of their sisters' attorney was legally sound.

There was no representation of facts, but only a concurrence in legal opinion. This constituted no basis for an estoppel.

> Ency. Am. & Eng. Law, vol. 11, p. 425, and cases.
> 2 Pomeroy Eq. Jur., secs. 843 to 849.

In Ricard *vs.* Williams, (7 Wheat., 59), this court said:

> "If, indeed, the party be in under title, and by mistake of law, he supposes himself possessed of a less estate in the land than really belongs to him, the law will adjudge him in possession of, and remit him to, his full right and title. For a mistake of law shall not in such case prejudice the right of the party and his possession, therefore must be held coextensive with his right."

The only effect of the submission of Elias and James Travers to the erroneous opinion of Mr. Webb was to enable their sisters and their children to obtain quarterly, for a number of years, rents to which they were not entitled. Surely this raised no equitable estoppel upon Elias and his children to prevent them from asserting their sole title.

The Lease Offered in Evidence.

The appellees offered in evidence a lease from Elias and James Travers and their sisters to Freeborn G. Smith of part of the property in question contained in the devise to Joseph, in which lease the lessors are described as heirs of Joseph, and upon it claim an estoppel.

Given the fullest effect it is a recital of heirship, and a lease as such heirs. But this is no estoppel on the brothers from asserting that they had title not derived from Joseph and that their sisters had no title.

The *lease* is not in litigation; its recitals are immaterial, and amount only to a declaration.

> 20 Ency. Am. & Eng. Law, pp. 459, 460.
> Carpenter *vs.* Suller, 8 Mees. & W., 209.

A mistake of fact by the auditor must be noticed. He says (Rec., p. 88):

> "The conditions, management, and enjoyment of the property as here detailed extended over a period of twenty years."

This is an egregious error. Joseph Travers died September 12, 1882 (Rec., pp. 2, 92). There was no correspondence between the brothers and their sisters until after that event. (See letters, Rec., p. 112 et seq.). The first division of rentals from the estate of Joseph was May 1, 1883 (Rec., pp. 96, 123), and the powers of attorney to collect these rentals were dated in October and December, 1882. (Rec., p. 97).

The original bill in this cause was filed June 8, 1900 (Rec., p. 1), or less than eighteen years after Joseph Travers died.

By no process of mathematics can twenty years of acquiescence be figured out of these facts. All dates in proof were simply ignored by the auditor in the statement quoted.

There is nothing in the case which can operate to transfer title from the appellants, or to make it wrong for them to assert their right, nor is there any evidence of a purpose in their ancestors to divide the corpus of the property.

Parol Partition.

At the hearing before Mr. Justice Gould the appellees argued that the division of the rents was to be regarded as a parol partition which the court would not disturb. How a division of rents can be set up as a partition of the land, was not explained, or how this action for partition could be sustained if there was a prior partition. The point was not made in the Court of Appeals, but since it may be made in this court we discuss it.

1. The answers, original and amended, do not assert that there ever was a parol partition. In fact, the defendants' claim is that they are tenants in common with the appellants of all the lands involved in these proceedings, and that the appellants are estopped from denial of such common tenancy (Rec., pp. 21, 24).

Having set up a case of estoppel, and not a parol partition, the defendants may not shift their ground.

Foster *vs.* Goddard, 1 Black, 506, 518.

2. There could not have been a partition by parol or otherwise. Partition means division between owners (joint or common), so that each shall hold his own part in severalty.

Anderson's Dict., tit. Partition.

Here, confessedly, there was no division into separate parcels. No one of these defendants (children of the sisters) has ever claimed that any defined part of the estate, determined by lot and square or by metes and bounds, was ever set apart to his ancestor. This must

have been done if there was partition. If partition had been asserted in the answers it would have been a complete defense, and the court would not have proceeded to decree partition (or sale) until this issue was disposed of.

3. Courts of equity will not recognize an agreement to partition unless followed by exclusive possession in severalty. To this effect are all the cases and text book statements cited by our opponents in their brief on the subject in the court below. Freeman on Cotenancy and Partition (sec. 404) says:

> "But in order to uphold a partition . . . it must satisfactorily appear that there was not only an agreement to make the partition, but that the same was fully executed, and followed by a several possession by either the parties themselves or their grantees."

Mr. Freeman also indicates, in section 402, that the agreement to partition must be so far executed that a bill for specific performance on the ground of part performance would lie; that is, "whenever it has been carried into execution by the parties."

> "To bar a right to partition conferred by law, by setting up a voluntary partition, it should be manifested by a writing, or a definite oral partition into defined parts, accompanied by possession in severalty of the respective parcels, and should be clearly proven."
>
> 33 W. Va., 494, Patterson *vs.* Martin.

An examination of all the authorities cited by opposing counsel on this subject in the court below shows that there has been no decided case supporting a supposed parol partition *where exclusive possession of a definite parcel*, taken under the parol agreement, has not been clearly proven.

See 17th Ency. of Law (1st ed.), p. 668 et seq.

Again, to sustain the claim of parol partition it must be insisted that there were several such agreements; one after the death of Joseph, in 1882, and another after the death of James, in 1883; but even then the claim must fail, for Elias and his heirs continued up to the filing of this action to receive rents from the properties held by Joseph and James, as tenants in common thereof, and to hold in severalty the property devised to Elias by his father.

It is submitted that in the pleadings there is no allegation, and in the evidence no proof, of a parol partition, or of any agreement to divide the corpus of the property. The proof shows only an erroneous construction of the ancestor's will, and a consequent erroneous division of income from rents, which can not affect title to the land.

It is submitted that the decree below should be reversed and the cause remanded with directions to reverse the decree of the Supreme Court of the District of Columbia and direct the account to be restated, that the proceeds of sales of the properties in question may be awarded to the representatives of Elias Travers.

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FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Office Supreme Court, U.
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JAMES H. McKENNE
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No. 76.

AMELIA C. TRAVERS, CHARLES E. TRAVERS, JOHN H. TRAVERS, JOSEPH TRAVERS, JAMES W. TRAVERS, AND KATE M. M. OWENS, APPELLANTS,

vs.

MARIA L. REINHARDT, LOUIS F. REINHARDT, MARGARET M. MITCHELL, ELIZABETH MITCHELL, MARY L. WALLIS, SAMUEL WALLIS, ALICE V. ROHRER, WILLIAM H. ROHRER, SIDNEY MITCHELL, ANNIE MITCHELL, ANNIE E. TRAVERS, AND "THE SISTERS OF THE VISITATION," A CORPORATION, APPELLEES.

BRIEF FOR APPELLEES.

W. A. GORDON,
G. E. HAMILTON,
M. J. COLBERT,
J. H. GORDON,
For Appellees.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23452

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BRIEF FOR APPELLEES.

I.

Statement of Case.

The original bill was filed on June 8, 1900, for partition or sale of certain real estate devised by the will of Nicholas Travers, of which the only parts now involved are certain lots in square 291, in the city of Washington. Incidentally

the bill prays for a construction of the will of said Nicholas Travers.

The complainants and certain of the defendants claim title through Elias Travers, a son of said Nicholas; the other defendants claim through the daughters of said Nicholas. Nicholas Travers died about the beginning of the year 1849, leaving as his heirs-at-law his sons, Nicholas, Jr., Joseph, James, and Elias, and his daughters, Sydney Virginia Mitchell, Mary Wynne, and Elizabeth Travers, known as Sister Mary Agatha. He died testate, and his will, dated July 10, 1840, was unsuccessfully contested by his daughters. In said will he made various devises to each of his sons, the devises in some cases being to said son, "his heirs and assigns forever, in fee simple," and in others to said son "and his heirs forever," the devise in the latter case being subject to a general provision in the following words:

> "With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my will, and I do order and direct, as a general provision, that if any of my said sons should die without leaving a wife, or a child or children living at his death, then his estate herein devised to him, save and excepting those portions thereof expressly granted and so named to be 'in fee simple,' and which they can sell and dispose of as they think fit, shall go, and be invested in fee, to my surviving sons and the child or children of such as may be dead, such child or children representing the share of the father, but if either of my sons shall, at his death, leave a wife either with or without a child or children, such wife shall be entitled to her dower rights and privileges."
>
> Record, page 144.

All the property now involved was devised subject to the above general provision.

Nicholas Travers, Jr., died during the contest over the will of his father. Joseph Travers died September 12, 1882, intestate, leaving a widow, but no children. James Travers

died in October, 1883, leaving a will in which he devised his property in the District of Columbia in his brothers and sisters. James left no children; those claiming under his sisters allege that he left a widow, and those claiming under his brother Elias that he died unmarried. Elias Travers died in April, 1887, leaving children. Mrs. Wynne died in 1892 and Mrs. Mitchell in 1895, both leaving children. Elizabeth Travers died in 1897, testate. Those claiming under Elias Travers allege that under the provisions of the will of Nicholas Travers the entire title to the lots in controversy is vested in them, urging that on the death of Joseph, leaving no children, the property devised to him became vested in James and Elias as survivors, and that on the death of James without children the property devised to him became vested in Elias as survivor. On behalf of those claiming under the daughters of Nicholas Travers it is urged (1) that as both Joseph and James died leaving widows, the property devised to them was relieved from the operation of the general provision of the will; (2) that upon the death of Joseph it was agreed between his surviving brothers, James and Elias, and the three sisters that all the property devised to Joseph and James should be treated as free from the general provision of the will, and that such agreement was carried into effect by an equal division of the rents derived from the property devised to Joseph and James, and that such equal division continued to be made until the filing of the suit.

Sales having been made by trustees appointed by the court, the cause was referred to the auditor to ascertain the respective interests of the parties in the proceeds of sales and make distribution. The auditor having found adversely to those claiming under Elias Travers, exceptions to his report were filed by them. The decree of the lower court overruling these exceptions having been affirmed by the Court of Appeals, the cause is brought here for a reversal of said decree.

II.

Points.

First. Joseph Travers and James Travers died seized of a title in fee to the property devised to them by their father, provided they left widows surviving them.

Second. Both Joseph and James Travers left widows surviving them.

Third. Under the agreement between James and Elias Travers and their sisters, after the death of Joseph Travers each sister acquired an equal interest in fee with the surviving brothers in the property devised to Joseph and James, and those claiming under Elias Travers are estopped from denying the title of the sisters in such interests.

First.

Joseph Travers and James Travers died seized of a title in fee to the property devised to them by their father, provided they left widows surviving them.

By the will of Nicholas Travers all devises to his sons were in fee, the variation in the wording by the addition "in fee simple" in no way affecting the estates devised. There is nothing in the will changing the devises in fee, except the general provision attached to those devises in which the words "in fee simple" are omitted. The various codicils republish the will except as therein specifically revoked.

It has been suggested by those claiming under Elias Travers that the third codicil, in which the testator stated that in his will he had declared that the "real estate not devised by the use of the words 'in fee simple' shall be held by such devisees for life, and then according to stipulations

and restrictions as therein contained and declared by said will," would indicate his intention not to pass a fee unless the words "in fee simple" were used.

It was clearly not the intention of the testator to devise a life estate unless the words "in fee simple" were used, as in that case the property in square 291 would not have passed to the child or children of a devisee had he left any; and as it could go over to the surviving brothers only upon the devisee dying without leaving "a wife, or child or children," the testator would have died intestate as to the fee in said lots.

The third codicil republishes the will and does not revoke or alter its provisions, but simply gives an inaccurate recital of what is provided in said general provision. The devises to the sons are, therefore, neither revoked or modified by said recital, for while explanatory expressions may aid in the construction of doubtful words, they cannot warrant the rejection of words that are clear.

Cole *vs.* Wade, 16 Ves., 46.
In re Smith, 2 Johns. & H., 594.

The intent of the testator as ascertained from the will must prevail. The will speaks for itself, and it is the intention of the testator as expressed in said will which is to govern, and this must be judged exclusively by the words of the instrument as applied to the subject-matter and the surrounding circumstances. Every expressed intention of the testator must be carried out where it can, and such a construction will, if possible, be adopted as will uphold the will and bring it as near reason and good sense as possible.

I Redfield on Wills, 433 and 434.

The will is explicit in its terms. The devises are in fee, subject to the provision "that if any of my sons should die without leaving a wife, or a child or children living at his death, then his estate herein devised to him * * * shall

go, and be invested in fee, to my surviving sons." These words, "without leaving a wife, or child or children," are used three times in the will, showing deliberation and care in the selection of words expressive of the testator's intention. There are no words used throwing doubt upon the intention of the testator, and if recourse is had to his words, the intention is clear and unambiguous.

How can the intention of a testator be arrived at except by his words, especially when his words, as in this case, are clear and unambiguous? It is urged by those claiming under Elias that the word *"or"* should read *"and,"* so as to make the clause read "should die without leaving wife *and* child or children living at the time of his death." This could not possibly have been the intention of the testator, as thereby the children of the devisee would have been deprived of any benefit if the wife should not be living at the time of his death. That is to say, if any of the brothers should have a wife and children and the wife shall die before her husband, the children would take absolutely nothing at the father's death—something which, under no possible theory, could the testator have intended.

It is not proper to conjecture what was the intention of the testator, and it can only be determined by the language which he uses, fairly construed. The estate created by the use of the word "or" is an entirely different estate from what would have been created by the use of the word "and," and the change of "or" into "and" can only be made when the intention of the testator is clear and beyond doubt.

No word in a will can be rejected and another substituted in its place without the clearest certainty that such was the intention of the testator.

I Redfield on Wills, 472.

It seems to be admitted on all hands, by the experienced and able writers and judges, that no liberty of transposition or supplying of words is allowable unless in furtherance of the most unquestionable purpose of the testator.

I Redfield on Wills, 470.

The safest course is to abide by the words unless upon the whole there is something amounting almost to demonstration that the plain meaning of the words is not the meaning of the testator.

Cooke *vs.* DeVandes, 9 Ves., 195-205.

It is the duty of the court to give effect to all the words of a will if by the rules of law it can be done, and when words occur in a will their plain and ordinary sense is to be attached to them unless the testator manifestly applies them in some other sense. We may indulge in conjectures, but the law does not decide upon conjectures, but the plain, reasonable, and certain expressions of intent found on the face of the will.

Wright *vs.* Denn, 10 Wheaton, 239.

There is no rule of more universal application than that the plain and unambiguous words of the will must prevail, and are not to be controlled or qualified by any conjectural or doubtful constructions growing out of the situation, circumstances, or conditions, either of the testator, his property, or family.

I Redfield on Wills, 430.

There is a rule of common sense as strong as any case can be, that words in a will are to be construed according to their natural sense unless some obvious inconvenience or incongruity would result from so construing them.

Doe *vs.* Jessup, 12 East., 288.

I Redfield on Wills, 477, note.

No change will be made where it will do violence to the expressed intention of the testator.

Van Vetchen *vs.* Pearson, 5 Paige, 514.

The American cases seem to have required very clear evidence that the word "or" was used for "and" to justify the

substitution of one for the other—evidence amounting almost to certainty.

I Redfield on Wills, 487, note.

With this doctrine concurring, the court of Appeals says in this case (Rec., p. 205):

> "We agree with the opinion expressed by the auditor and the learned trial justice, that there is no expression of such a controlling intention as to require this substitution. The words used are plain and unambiguous. This being so, they must be given their ordinary and usual meaning, and cannot be controlled by conjecture."

A careful examination of the most recent cases upon this point cannot fail to convince any one that the liberality heretofore taken by courts in substituting "and" for "or," and *vice versa*, especially in early cases, have received very slight encouragement for the past few years.

I Redfield on Wills, 476.

While the word "or" is changed into "and," and *vice versa*, it appears only to be done where the change prevents the heirs of the first taker from being disinherited, and never where the change would have the effect of disinheriting such heir.

Jarmin on Wills, 506, 507, 525.
Raborg *vs.* Hammond, 2 Harris & Gill, 53.

Where a devise to A, and if he die without arriving at 21 years or having issue, then over, it is clear that both events must concur to pass the estate over.

I Redfield on Wills, 481.

As the will is explicit in its terms and shows deliberation and care by the testator in the selection of the words used; as there is nothing to show that any incongruity or incon-

venience would result from construing the words of the will in their plain and ordinary sense; as the change of the word "or" into "and" would create an entirely different estate from that created by the will, and would have prevented the children of the devisees, had they left any, from inheriting—a result that could not have been contemplated by the testator; as the change from "or" to "and" would entirely disinherit the children if the wife had died in the lifetime of her husband; and as there is no element in the will—certainly no element amounting to clearest certainty—showing any intention on the part of the testator to use any except the words used, and those words in their ordinary acceptation, it is urged that the will should stand as written, and that the estate devised would not go over to the surviving sons, provided the original devisee died leaving either a wife or a child living at the time of his death.

SECOND.

A. Both Joseph and James Travers left widows surviving them. The fact that Joseph left a widow is admitted, and it is urged that James also left a widow. In support of this contention, Sophia V. O'Brien, who it is claimed is the widow of James, testified that her maiden name was Grayson; that she met James Travers first in 1864, when she was seventeen years of age, and later in Alexandria, Virginia, where, on August 15, 1865, a ceremony of marriage was performed between them, and, believing they were married, she went to live with him as his wife, and so lived with him continuously until his death, on November 1, 1883, at Point Pleasant, New Jersey (Rec., p. 104); that immediately after said ceremony in Virginia she and James Travers went to Shrewsbury river, in the State of New Jersey (though Mrs. Travers in her testimony was uncertain whether that place was in New Jersey or New York), and lived there for several weeks at the hotel as man and wife (Rec., p. 105); that they

then rented a place in Belair, Harford county, Maryland, where they lived until they purchased property in Talbot county, Maryland, where they lived continuously from 1867 to 1883 (Rec., p. 106), when they sold the farm and, on account of Mr. Travers' failing health, went to Point Pleasant, New Jersey, where he died (Rec., p. 113); that from the time of the marriage, in August, 1865, to the time of the death of Mr. Travers, in November, 1883, they lived continuously as man and wife, whether in Maryland, the District of Columbia, or New Jersey, and that during all that time James Travers regarded her as his wife and introduced her and held her out as such in the communities in which they lived, and that they were regarded as married in said communities; that she always regarded herself as his wife and joined him in deeds as such (Rec., p. 151); that he executed wills in which she was named as his wife, and under one of which she qualified as executrix (Rec., p. 105); that she believed the marriage in Virginia was a valid marriage until five or six years later, when she was informed that the ceremony had been performed by a friend of Mr. Travers, whom she thought was a clergyman, and that Mr. Travers always said they were as much married as if they had been married before a priest or minister (Rec., p. 114).

B. A deed made September 27, 1867, from James Travers, in which Sophia V. Travers joined and duly acknowledged as his wife (Rec., p. 159); a will written in the handwriting of James Travers, dated February 8, 1881, in which certain devises were made to his wife, Sophia V. Travers, and in which she is named as executrix (Rec., p. 159); a will of James Travers, dated October 5, 1883, executed at Point Pleasant, New Jersey, in which he bequeathed to his wife, not giving her name, the residue of his property while she remained his widow, and provided that in the event of his wife contracting another marriage she should possess as of her own right only one-third of the property, and under which she qualified as executrix (Rec., p. 280), and the

will of Elizabeth Travers, a sister of James Travers, in which she makes a bequest to Annie E. Travers, his reputed child, naming her as her niece (Rec., p. 367), were also placed in evidence.

No testimony of any kind was offered to contradict the above, though in the cross-examination of Mrs. O'Brien it was evident that inquiry had been made in the community in which she and Mr. Travers had lived as to his representations that she was his wife. George H. Rucker, clerk of the county court of Alexandria county, Virginia, however, testified that among the papers of his office there was no record of a marriage license having been issued to James Travers and Sophia V. Grayson between the years 1860 and 1878.

While it may be admitted that as the marriage in Virginia in 1865 did not comply with the statute of that State, said marriage, under the decision in Offield *vs.* Davis, 100 Va., 250, would have been void as to the status of the parties in that State and as to property there located, it must be borne in mind that the parties immediately left that State and never returned there, but subsequently resided in New Jersey and Maryland, and that the property in controversy is located in the District of Columbia, and that the status of Sophia V. as the wife of James Travers at the time of his decease does not depend upon the law in Virginia.

It has never been held that the law in the District of Columbia denied validity to marriages good at common law, and in fact the only dicta on the subject lean toward the validity of such marriages, even when contracted in said District. Judge Merrick, who was deeply learned in the law of Maryland as in force in the District of Columbia, said in Thomas *vs.* Holtzman, 18 D. C., 66:

> "In the first place, it is not at all apparent that it ever was the law that a marriage *in facie de ecclesiæ* was necessary for the purpose of legitimizing the issue. It is true that the Court of Appeals of Maryland in the last four or five years has decided that such was

> the law, but that decision is not binding on us. It is laid down by Blackstone that a marriage *per verba de presenti* without the intervention of a clergyman is a legitimate marriage. And both Story and Kent say that according to the universal understanding in this country, a marriage *per verba de presenti,* without the intervention of a clergyman, followed by cohabitation, makes a legitimate marriage."

If, therefore, a common-law marriage was contracted at any time between James and Sophia V. Travers, such marriage would be recognized in the District of Columbia.

The testimony as to the marriage in Virginia, and that from that time to the day of his death continuously James Travers recognized Sophia V. as his wife and introduced her as such in the communities in which they lived, and that she was generally recognized as his wife, is clear and positive. This testimony is uncontradicted, no attempt being made to contradict it, although the cross-examination shows that inquiry had been made in the community in which they lived in Maryland concerning Mr. Travers' representations that she was his wife.

During the residence in Maryland the execution in 1867 of the deed, in which she joined with him as his wife, shows his representation of her as such, and the certificate of the officer taking the acknowledgment that she was his wife shows that she was recognized in the community as such.

During the residence in Point Pleasant, New Jersey, Mr. Travers recognized her as his wife, in the most solemn manner possible, by executing a will wherein he named his "wife" (without giving her name) as devisee and executrix, and under which Sophia V. Travers was granted letters testamentary, qualified as executrix, and administered his estate. This will removes all doubts as to his recognition of her as his wife, for it provides *"in the event of my wife contracting another marriage,* then it is my will." She, as his wife, could not contract another marriage unless she had first contracted one with him.

The fact that letters testamentary were granted to her by the New Jersey court as the widow of James Travers, although her name was not given in the will, is conclusive proof of the reputation of marriage in that community; and the fact that his next of kin and heirs-at-law permitted her as "wife" to qualify as executrix and take under the devise to his "wife" shows conclusively that she was recognized by them as the wife of their brother.

The bequest in the will of his sister Elizabeth, a nun in the convent at Georgetown, to Annie E. Travers, the reputed child of James, as her "niece" (Rec., p. 164), should be received as evidence of reputation, so far as that sister is concerned, as to the marriage, and that James and Sophia V. Travers were man and wife.

These acts certainly constituted a marriage under the laws of New Jersey, and if a lawful marriage in that State it will be recognized as such in the District of Columbia.

In Atlantic City R. R. Co. *vs.* Gooding, 62 N. J., 394, it was held that a contract of marriage made *per verba de presenti* constitutes an actual marriage and is valid, and in Stevens *vs.* Stevens, 11 Dickinson Eq., 490, that a common-law marriage is good. Even though the marriage in Virginia did not constitute a lawful marriage in that State, it did constitute an agreement between the parties to accept each other as man and wife, thus constituting a marriage good at common law, and their stay in New Jersey immediately after said common-law marriage, and especially the residence in that State in 1883, prior to the death of James Travers, and their living there in compliance with the terms of the contract entered into in Virginia, made their status that of man and wife.

In Meister *vs.* Moore, 96 U. S., 76, this Court, after full consideration of the subject of common-law marriages and the construction to be given to statutes affecting them, held in regard to an informal marriage by contract *per verba de presenti,* that there can be no doubt that such a contract

constitutes a marriage at common law, in view of the adjudications made in this country from its earliest settlement to the present time.

Marriage is everywhere regarded as a civil contract, and though statutes in many States regulate the mode of entering into the contract, they do not confer the right. A statute may take away a common-law right, but there is always the presumption that the legislature had no such intention unless it is plainly expressed. A statute may declare that no marriage shall be valid unless solemnized in a prescribed manner, but such an enactment is very different from a law requiring all marriages to be entered into in the presence of a magistrate or a clergyman, or that it be preceded by a license, or publications of bans, or that it be attested by witnesses. Such formal provisions may be construed as merely directory, instead of being treated as destructive of a common-law right to form the marriage relation by words of present consent. Such has been the rule generally adopted in construing statutes regulating marriages. Whatever directions they may give respecting its formation or solemnization, courts have usually held a marriage good at common law unless they contain express words of nullity.

The Virginia statute, as the Michigan statute in Meister *vs.* Moore, does not contain "express words of nullity," and would under the construction given by this Court be a legal marriage; and though the statute of Virginia could regulate "the mode of entering into the contract," it could not "confer the right" to contract a common-law marriage, nor declare the same to be void except in that State; and the distinction between statutes which prescribe that certain formalities shall be complied with and those which declare such marriages to be void unless the prescribed formalities are complied with is clearly set out by the court.

In Meyer *vs.* Pope, 110 Mass., 314, it is held that where the marriage was entered into in good faith, believed by one or both parties to be valid, and followed by cohabitation, it was valid.

In Smith *vs.* Smith, 52 N. J., 207, the parties went from Vermont to Boston, and the ceremony was performed by a man whom the woman supposed was a clergyman; the parties then returned to Vermont and lived as man and wife. *Held,* that it was a valid marriage in Massachusetts and was recognized as such in New Jersey, where the land was situated.

The decision in Offield *vs.* Davis rendered in 1902 is not conclusive on this court, as in 1877 it decided, in Meister *vs.* Moore, in construing a statute in many respects identical with the Virginia statute, that a marriage similar to that now under consideration was vaild.

In Pease *vs.* Peck, 18 Howard, 598, Mr. Justice Grier said:

> "There are, it is true, many *dicta* to be found in our decisions, averring that the courts of the United States are bound to follow the decision of the State court on the construction of their own laws. But although this may be a correct, yet a rather strong expression of a general rule, it cannot be received as the enunciation of a maxim of universal application: Accordingly, our reports furnish many cases of exceptions to it. In all cases where there is a settled construction of the laws of a State, by its highest judicature, established by admitted precedents, it is the practice of the courts of the United States to receive and adopt it without criticism or further inquiry. But when this court has first decided a question arising under State laws, we do not feel bound to surrender our convictions on account of a contrary subsequent decision of a State court."
>
> See also Burgess *vs.* Seligman, 107 U. S., 20.
> Julian *vs.* Central Trust Co., 193 U. S., 95.

It has been urged that the testimony of Sophia V. O'Brien should have been rejected as unworthy of belief, because on cross-examination she admitted that in one particular she had testified falsely. A careful examination of her testimony and the circumstances under which she gave it does not warrant the application of the rule *falsus in uno falsus in omnibus.* She had no interest whatsoever in the subject-

matter of the litigation, and the false statement related to a matter not material to the determination of the cause. The temptation to shield the reputation of a girl whom she had reared and loved as a daughter was strong, and though she yielded to such temptation, her statements as to other facts might be entirely reliable. Her subsequent admissions as to the falsity of her statements in regard to the child were made voluntarily and under no apprehension of penalty, but she made no withdrawal of any statement made by her in her testimony concerning her relations to James Travers. Should, however, the rule be considered as applicable and her entire testimony be rejected, there would still remain (1) the deed executed and acknowledged by her in connection with James Travers as his wife; (2) the will of James Travers executed at Point Pleasant, and relied on by the complainants in their bill and the administration of Sophia V. Travers thereunder, and (3) the will of Elizabeth Travers, also relied on by the complainants in their bill; which said deed and wills established the facts that James Travers in the most solemn manner recognized Sophia V. Travers as his wife, and that she was recognized as his wife both in communities in which they lived and by the heirs-at-law and next of kin of James Travers.

The testimony of Sophia V. O'Brien as to the marriage in Virginia, the cohabitation as man and wife for nearly twenty years, and the general reputation that she and James Travers were married is not only clear, positive, and uncontradicted, but is corroborated by the documentary evidence offered; and said evidence is such as this court has prescribed in Maryland *vs.* Baldwin, 112 U. S., 490, and Jewell *vs.* Jewell, 1 Howard, 219, as admissible to establish the existence of marriage.

Considering the history of the connection between these parties as disclosed by the testimony in the case, it is asserted without fear of contradiction that the books contain no stronger case of a perfect common-law marriage than that between James and Sophia Travers.

THIRD.

Under an agreement between James and Elias Travers and their sisters, after the death of Joseph Travers, each sister acquired an equal interest in fee with the surviving brothers in the property devised to Joseph and James, and those claiming under Elias Travers are estopped from denying the title of the sisters in such interest.

The heirs and devisees of the three sisters in their answer deny that the heirs of Elias Travers are entitled to more than a fourth interest in said lots, and claim that they are entitled to the other three-fourths; claiming, independently of the will of Nicholas Travers, that on the death of Joseph it was so agreed between his surviving brothers and sisters, and that the will of James devising equally to all was accepted by them and Elias; and that since the death of Joseph the rents from the lots in square 291 devised to him have been collected by an agent and divided, until the death of James, equally between James, Elias, and the sisters, and since the death of James equally between Elias and the sisters, and since their death equally between their heirs and devisees; and that since the death of James the rents from the lots devised to him have been collected by an agent and divided equally between Elias and the sisters, and since their death equally between their heirs and devisees.

To establish the agreement between the brothers and sisters that the lots in square 291 devised by the will of Nicholas Travers to Joseph and James Travers should, after their death, be held equally between the three sisters and the surviving brothers, the defendants, claiming under the sisters, offered the following testimony:

Mr. Stellwagen, who testified that he had been a member of the firm of Fisher & Co. (of which firm Thomas J. Fisher was the head) prior to and since 1882; that immediately after the death of Joseph Travers, in 1882, his

firm began to collect the rents from the real estate of Joseph, including the lots in square 291, and distributed the same equally between James and Elias and the three sisters until the death of James, and after the death of James equally between Elias and the three sisters. During the life of the widow of Joseph this division was made subject to the payment to her of one-third of said rents. Immediately after the death of James Travers, in 1883, his firm began to collect the rents from the real estate of James, including the lots in square 291, and distributed said rents equally to Elias Travers and the three sisters. That since the time his firm began to collect said rents and distribute the same, it has continuously collected and distributed them to the filing of the suit; that statements of rents collected and of the distributive shares were furnished said parties, certain of which statements offered in evidence were identified as originals; that such collections were made and distributed, and checks given in payment were accepted without objection, and that during the whole time no exception or complaint was made by James or Elias during their lives, or by the heirs of Elias after his death; that the collections were made by virtue of letters of attorney from James, Elias, and the sisters, which were offered and filed in evidence; that the distribution was made under instructions from Mr. Fisher, the head of the firm, who informed him that it was so distributed under agreement between the parties interested; that Mr. William B. Webb consulted with Mr. Fisher and Elias Travers in regard to the estate, and that his impression was that Mr. Webb represented all the parties in the arrangements that were made. He never saw and had no knowledge of the agreement otherwise than as mentioned by Mr. Fisher in his instructions as to the distribution.

Letters were introduced from the late William B. Webb, a lawyer then living in Washington, to two of the sisters, in which he informed them that the question as to how Joseph held the property in square 291 was considered im-

mediately after his death, and that an opinion had been given by Mr. Totten that he held the same in fee, and that Elias had accepted this interpretation and instructed him to prepare an agreement for the signature of all providing that the property should be held in equal interests by the surviving brothers and sisters and all controversy be at an end, and that he had prepared powers of attorney to be signed authorizing Mr. Fisher to collect and distribute the rents; also letters from Mr. Fisher acknowledging the receipt of the attorneys; also letters requesting Mr. Fisher to advance $500 to Mrs. Wynne from rents collected; also letters from Elias and Elizabeth Travers in regard to another advance to Mrs. Wynne; also letters from Fisher & Co. showing these advances to have been made; also entries in books of Fisher & Co. showing said advances and their payment from Mrs. Wynne's share of rents collected; also the will of James Travers devising his estate equally to his brother and sisters; also letters showing that when James was on his deathbed his brother Elias and Mr. Fisher were summoned to New Jersey; also lease in which Elias joined with his sisters, reciting that they were heirs-at-law of James.

All of this testimony is objected to as being hearsay and irrelevant.

It is claimed that in the absence of direct testimony from actors all this testimony is admissible as a part of the *res gestæ*, being the declarations and acts of the parties at the time the rents began to be collected and distributed by Fisher & Co. and the circumstances surrounding and accompanying the action of Fisher in this regard.

One fact appears beyond dispute by the testimony of Mr. Stellwagen, namely, that from the death of Joseph and James to the filing of the suit, the rents from the lots in square 291, which had been devised to Joseph and James by their father, were collected and distributed equally between the brothers and the sisters and those claiming under them,

and that the rents so distributed were accepted by the respective parties without demur or protest.

This condition of affairs requires some explanation as to the reason for such distribution of the rent. The sons were fully advised as to the provisions of their father's will and had contended that under said will they took the lots in square 291 subject to survivorship, and when Nicholas, Jr., died unmarried, the surviving sons exercised the right of survivors and divided the lots in said square devised to him among themselves.

If the will of Nicholas did not pass a fee to Joseph and the lots in square 291 on his death went to his surviving brothers, then after his death James and Elias would have taken as survivors and the rents would have gone to them equally. Under the same condition, on the death of James the lots in square 291 devised to him would have been vested in Elias as survivor and all the rents would have gone to him. In neither case would the sisters have been entitled to any interest in said lots or in the rents derived therefrom. Immediately, however, on the death of Joseph the rents were collected by Fisher & Co., on authority of duly executed powers of attorney, not only from the two surviving brothers, but from the sisters also, and distributed equally among them, and this without complaint or protest from either brother. This distribution of rents is so different from what would have been the case had the brothers claimed as survivors and not waived the rights they had, that the circumstances producing this result must be shown and the causes explained. This result could not have been the result of accident, and, if capable of explanation, testimony to explain the condition of affairs is admissible, even though no agreement can be found, as all the actors, James Travers, Elias Travers, Mrs. Wynne, Mrs. Mitchell, Elizabeth Travers, Mr. Fisher, and Mr. Webb, are dead. Were it otherwise the rules of evidence would be the means of denying justice instead of advancing it.

Can it be successfully contended that because all the actors are dead no explanation can be made as to how this condition of affairs took place?

> "Hearsay is often admitted in evidence as part of the *res gestæ*, the meaning of which seems to be that where it is necessary, in the course of a cause, to inquire into the nature of a particular act and the intention of the party who did the act, proof of what the party said at the time of doing it is admissible evidence for the purpose of showing its true character."
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> Kolb *vs.* Whitely, 3 G. & J., 197.

In this cause the judge quotes from Starkie on Evidence, vol. 1, page 19:

> "The necessity of resorting to presumptive evidence is manifest. It very frequently happens that no direct testimony can be procured, and often when it can be had it is necessary to try its accuracy and weight by comparing it with the surrounding circumstances. From what has been said it seems to follow that all the surrounding facts of a transaction, or, as they are usually termed, the *res gestæ*, may be submitted to a jury, provided they can be established by competent means and afford any fair presumption or inference as to the question in dispute, for, as has already been observed, so frequently is the failure of evidence from accident or design, and so great is the temptation to the concealment of the truth and misrepresentation of facts, that no competent means of ascertaining the truth can or ought to be neglected."
>
> "Where the parties against whom the evidence is offered were privy to the act, the objection ceases; it is no longer *inter alios*, and in general where the evidence is offered as a mere fact which is connected with the matter in dispute, and not with a view to affect the parties otherwise than as the actual existence of the fact affects the matter of the transaction itself, then although it was a transaction between others, yet as a mere fact and part of the *res gestæ* it is evidence."
>
> Starkie on Evidence, vol. 1, page 52.

It is a general rule of evidence that the declarations and acts of the principal parties to an act, as well as the circumstances surrounding them and accompanying the transaction at the time of the principal fact, may be given in evidence in a controversy as part of the *res gestæ* which are calculated to show the nature of the act and are in harmony with it. The declarations or acts must be the natural and inseparable circumstances of the principal act in controversy, so that they may be presumed to have been induced by the same motive that led to the act itself, and so closely allied thereto in point of time as obviously to form a part of the transaction and must be calculated to unfold its nature and quality.

Bradner on Evidence, p. 485.

In Dawson *vs.* Galloway, 18 Ga., 580, in a case of joint possession it was held that such possession was sufficient to admit evidence of the separate contemporaneous declarations of either possession as characterizing the joint possession. In this case the joint participation in rents created a joint possession of the estate.

Sometimes entries made by third parties or letters sent by them are original evidence; these entries must possess substantially the characteristics requisite in the case of verbal declarations which are a part of the *res gestæ* and the writer must have been authorized to make it. So the writing itself must be relevant to the transaction with which it is sought to be connected, and must relate to it and be contemporaneous with it and illustrate it.

Underhill on Evidence, p. 79.

The declarations and the act must make up one transaction. The theory justifying this course is that where such declarations are thus coupled with a probable act they receive confirmation from it.

All the testimony offered by the defendants comes within the rule above stated, being acts allied to and explanatory of the transaction and contemporaneous with it.

The rents were collected by Fisher & Co., who had not previously collected them, and the letters of attorney show the authority for collecting them. They could not have been collected without the authority of James and Elias; and should it be urged that said letters only covered the property in which Joseph had an undisputed fee, the fact that rents from lots in square 291 were collected negatives this objection. After the collection of these rents no distribution could have been made without the consent and direction of James and Elias. They were, however, distributed equally between the brothers and sisters, and Mr. Stellwagen testifies that this distribution was made by him under direction of his chief, Mr. Fisher, who stated that it was under an agreement of the Travers heirs. In the absence of this argeement, does not the contemporaneous statement of Mr. Fisher show the nature of said agreement, and is it not in harmony with and forming a part of the very transaction? Is Mr. Stellwagen debarred from testifying as to directions received from his chief, and the reasons given by such chief for such directions, and upon which the firm acted and was responsible? If such a rule obtains, surviving members of partnerships would be debarred from explaining the reason for the action of the firm in all cases where a deceased partner had alone conducted the preliminaries of the transaction.

Further light is thrown on the transaction by the contemporaneous letters of Mr. Webb to Elizabeth Travers and Mrs. Mitchell. These letters state that he had been consulted by Elias Travers on the death of Joseph, and that in his opinion Joseph died seized in fee of the lots in square 291; that Colonel Totten, acting for the railroad company, had so reported to Elias Travers; that Elias Travers had accepted Colonel Totten's opinion as correct, and had instructed him, Webb, to prepare an agreement for all the heirs to sign, which would give the lots to the brothers and sisters, and that as a preliminary measure he had prepared letters of attorney authorizing Fisher & Co. to collect the rents. Does

not Mr. Webb's statement agree with those of Fisher and Stellwagen, and show the declaration of the parties to have been in conformity with what actually occurred? These written statements of Mr. Webb are corroborated by the production of the letters of attorney referred to by them and on the authority of which the rents were actually collected. The lease from Elias and his sisters, as heirs of James, to Smith further establishes the fact that Elias had abandoned the claim of title as survivor of his brother.

The various letters from Elizabeth Travers, Elias Travers, and Mr. Fisher, in regard to the advances of each to Mrs. Wynne and the entries in the books of Fisher & Co. of repayment from Mrs. Wynne's portion of the rent, are all parts of the same transaction, showing that the agreement of distribution of rents had been entered into, and the payment of the fee of $400 to Mr. Webb out of the gross amount of the rents collected shows his connection as counsel and services rendered in behalf of all parties.

The letters from Mr. Fisher and Elias in connection with the visit to New Jersey during James Travers' last illness tend to show that Mr. Fisher, in connection with Elias, was acting for James in the interest of all the parties. Else why did he notify Elizabeth and why was he summoned to the deathbed? Testimony of this kind, showing and explaining what actually occurred, must be resorted to in default of direct evidence.

Estoppel is set up by those claiming under Elizabeth Travers and her sisters.

The heirs of Elias Travers claim title to the whole of the property leased to Freeborn G. Smith, which was part of that of which James Travers died seized. In this lease, which is executed with all the formalities of acknowledgments, the lessors are Elias Travers, Elizabeth Travers, Sydney V. Mitchell, and Mary Wynne, describing themselves as "the only heirs-at-law of James Travers, deceased," and the lease provides that rent is to be paid to them, and that at the end

of the term the property is to be surrendered to the lessors "and their heirs." In no way could the fact that Elias recognized that his sisters had an interest in fee in said lot be more clearly expressed. The intention of the lessors as to the capacity in which they conveyed is to be gathered from an inspection of the whole instrument. By this deed the heirs of Elias are estopped from claiming the entire estate to have been in their father.

Dundas *vs.* Hitchcock, 12 Howard, 265.

The action of Elias from the death of Joseph to the time of his death was such as to lead his sisters to believe that they had equal rights with him in the estates of James and Joseph, and relying on this action of Elias they took no further steps to assert such claim. The doctrine of equitable estoppel or estoppel *in pais* operates in favor of the sisters.

Dickerson *vs.* Colgrove, 100 U. S., 578.

Neither in pleading nor in testimony do the heirs of Elias give any explanation as to the condition which existed from the death of Joseph, in 1882, and the death of James, in 1883, to time of filing suit. They rest upon the claim that under the will of Nicholas Travers title is vested in them; yet for almost twenty years the property was in possession, through Fisher & Co., of the brothers and sisters equally, the rents collected and distributed equally between them, and such distribution acquiesced in by Elias and by his heirs for thirteen years after his death, which acquiescence is forcibly shown by the fact that as late as May 8, 1899, a bill was filed by certain of the heirs in the Supreme Court of the District of Columbia, in equity No. 20426, in which the parties and property involved are the same as in this cause, in which the title in fee simple as tenants in common of the descendants of the daughters of Nicholas Travers is not only admitted, but alleged. No claim is made nor any evidence offered that they ever asserted sole ownership during that

time. If all other defenses fail, the laches of Elias would make it a stale claim, not encouraged in equity, the courts uniformly declining to assist a person who has slept upon his rights and shown no excuse for his laches in asserting them.

Speidel *vs.* Henrici, 120 U. S., 387.
Brown *vs.* County of Buenavista, 95 U. S., 161.
Hammond *vs.* Hopkins, 143 U. S., 250.

The question of laches does not depend, as does the statute of limitations, upon the fact that a certain definite time has elapsed since the time of action accrued, but whether under all the circumstances of the particular case the plaintiff is chargeable with a want of due diligence in failing to institute proceedings before he did.

Townsend *vs.* Vanderwerken, 160 U. S., 171.

The courts now hold parties to a rigid compliance with the law, which demands not only that they should have been ignorant, but that they should have used reasonable diligence to have informed themselves of the facts.

Foster *vs.* Mansfield, 146 U. S., 88.
See, also, Halstead *vs.* Grinnan, 152 U. S., 412.

While the statute of frauds requires a contract concerning real estate to be in writing, equity will intervene and relieve the rigidity of the rule, and hold that a part payment removes the bar of the statute, and equity protects a parol gift of land equally with a parol agreement to sell it, if accompanied with possession. If the case as stated is made out with reasonable certainty, it is all that is required. Any other degree of certainty in a case of this character is unattainable.

Neale *vs.* Neale, 9 Wallace, 1.

As between Elias and his sisters it is scarcely necessary to refer to any consideration moving for his action, as none such

would be required at law; but the fact, as stated by Mr. Webb, that the agreement was to put a conclusion in the mind of Elias that Joseph died seized of a fee simple in shape to be acted on, and that such action would end the long-standing controversy in the family as to the property is undoubtedly a good and most valuable consideration. Besides this, natural affection alone is a good consideration.

The receipt of rents by the Travers sisters constituted possession of the property on their part, and such possession was part performance of their agreement with James and Elias sufficient to take the case out of the statute of frauds. Such receipt of rents shows that the parties had entered into some contract in regard to the property, and the court by reason of such receipt of rent, without knowing whether there was an agreement or not, must find the parties unequivocally in a position different from that which according to their legal rights they would be in if there was no contract. Thus if one man without being amenable to a charge of trespass is found in possession of another man's land, such a state of things is considered as showing unequivocally that some contract has taken place between the parties (Browne on statute of frauds, sec. 455). It must be such an act done as appears to the court would not have been done except on account of the agreement, and must refer to and result from the agreement (same, sec. 454). The act of part performance must appear to be done with the direct view to performing the agreement and tend inceptively toward its accomplishment (same, sec. 457). Where the party alleging the contract was previously a stranger to the estate, the question *quo animo* is generally answered without further proof by the mere fact of his being in possession with the knowledge of the owner of the fee, and without objection by him; a natural presumption arises from this fact that some contract has been entered into between the parties (same, sec. 481). The possession must be subsequent to the agreement (same, sec. 482), and with the knowledge

of the vendor (same, sec. 483), and retained under the contract (same, sec. 485). Mere contrariety in the proof will not prevent the court from directing execution of the agreement, the principle being to collect from the proof, if it can, what the terms of the agreement really are (same, sec. 494).

It is submitted that the proofs in this cause fulfill all the requirements, as above set forth, necessary to establish the contention of those claiming under the Travers sisters and take the case out of the statute of frauds.

Respectfully submitted,

WILLIAM A. GORDON,
GEORGE E. HAMILTON,
M. J. COLBERT,
J. HOLDSWORTH GORDON,
For Appellees.

Supreme Court of the United States.

No. 76.—October Term, 1906.

Amelia C. Travers, Charles E. Travers, John H. Travers, Joseph Travers, James W. Travers, and Kate M. M. Owens, Appellants,
vs.
Maria L. Reinhardt, Louis F. Reinhardt, Margaret M. Mitchell, Elizabeth Mitchell, Mary L. Wallis, Samuel Wallis, Alice V. Rohrer, William H. Rohrer, Sidney Mitchell, Annie Mitchell, Annie E. Travers, and "The Sisters of the Visitation," a corporation.

Appeal from the Court of Appeals of the District of Columbia.

[April 15th 1907.]

Mr. Justice Harlan delivered the opinion of the Court.

This suit was originally brought for the partition or sale of certain real estate in the city of Washington devised by the will (and codicils thereto) of Nicholas Travers who died in the year 1849, leaving four sons and three daughters.

The only parts of that estate remaining in dispute are certain lots in square 291 in Washington, and the questions to be determined depend upon the construction of that will and upon the evidence touching the alleged marriage of James Travers, a son of the testator, with Sophia V. Grayson.

By the first item of the will certain lots are devised to the testator's son Elias "and his heirs and assigns forever in fee simple." By the same item other lots are devised to the same son, "which last two devises shall be subject to the general provision hereinafter made in case of any sons dying without leaving a wife or child or children."

By the second item the testator devised lot 5, in square 291, to his son "Joseph Travers and his heirs forever," and two other specified lots "to him and his heirs forever, in fee simple;" lot 5 "being subject to the general provision aforesaid hereafter made."

By the third item he devised to his son Nicholas and his heirs forever certain lots in square 291 "subject to the general provision hereinafter made;" also "to him and his heirs forever, in fee simple," other real estate in square 36, and a designated parcel of ground in square 291, "said piece or parcel of ground to be subject to the general provision hereafter made."

By the fourth item certain devises are made to the son "James Travers and his heirs forever," "all of which devises are to be subject to the general provision hereinafter made."

Here follows, at the close of the fourth item, the "general provision" referred to: "With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my will, and I do order and direct, as a general provision, that if any of my sons should die *without leaving a wife, or a child or children living at his death*, then his estate herein devised to him, saving and excepting those portions thereof expressly granted and so named to be 'in fee simple,' and which they can sell and dispose of as they think fit, shall go, and be invested in fee, to my surviving sons and the child or children of such as may be dead, such child or children representing the share of the father—but if either of my sons shall, at his death, leave a wife either with or without a child or children, such wife shall be entitled to her dower rights and privileges."

This was followed in the will by certain devises for the benefit of the daughters, as well as by several codicils to the will, but it is not necessary to give their provisions in detail.

By a codicil, dated June 26th 1848, the testator revoked certain parts of his will, providing: "And in lieu thereof I do hereby give and devise all of said lots or part of lots, so as aforesaid described, with the house and other improvements and appurtenances, to my son James and his heirs, subject to the express stipulations and restrictions contained in the will to which this is a codicil, wherein I declare that all and every portion of my real estate not devised by the use of the words 'in fee simple,' shall be held by such devisees for life, and then according to stipulations and restrictions as therein contained and declared by said will."

It is contended here, as it was in the courts below, that the words in the above general provision, that "if any of my sons should die without leaving a wife or child or children living at his death," should be interpreted as if it read "if any of my sons should die without leaving a wife *and* child or children living at his death." The court is thus asked, by interpretation, to substitute the word "and" in place of "or" in the above sentence.

Looking at all the provisions of the will, and ascertaining, as best we may, the intention of the testator, we perceive no reason for interpreting the words used by him otherwise than according to their ordinary, natural meaning.

It is insisted by appellants that the general, dominant purpose of the testator was that his real estate should descend only through his sons, and that his daughters and their descendants should have no share therein. And the doctrine is invoked that "the predominant idea of a testator's

mind, when discovered, is to be heeded as against all doubtful and conflicting provisions which might of themselves defeat it; and the general intent and particular intent being inconsistent, the latter (the particular) must be sacrificed to the former—the general intent." *Schouler on Wills*, § 476. This general doctrine is not controverted, but there are other cardinal rules in the interpretation of wills which must be regarded. Mr. Justice Story, speaking for this court, said that effect must be given "to all the words of a will, if, by the rules of law, it can be done. And where words occur in a will their plain and ordinary sense is to be attached to them, unless the testator manifestly applies them in some other sense." *Wright* v. *Denn*, 10 *Wheat.* 204, 239. "The first and great rule in the exposition of wills," said Chief Justice Marshall, "to which all other rules must bend, is that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law" *Smith* v. *Bell*, 6 *Pet.* 68, 75; *Finlay* v. *King*, 3 *Pet.* 346, 377. The same thought, in substance, was expressed by Lord Chancellor Eldon in *Crooke* v. *De Vendes*, 9 *Ves.* 197, 205. He said that "where words have once got a clear, settled, legal meaning, it is very dangerous to conjecture against that, upon no better foundation than simply that it is improbable, the Testator could have meant to do one thing by one set of words, having done another thing, using other words, as to persons in the same degree of relation to him." It would seem clear that the words "without leaving a wife or child or children," where they first appear in the above general provision, were purposely chosen. They appear three times in the will, and their usual meaning is not doubtful. We think the testator meant "or," not "and." The court would not be justified in making the proposed substitution unless the whole context of the will plainly and beyond question requires that to be done in order to give effect to the will of the testator. That the words, in the general provision, "without leaving a wife or a child or children," were deliberately selected is to some extent shown by the last sentence in the first item of the will, "which two devises shall be subject to the general provision hereinafter made in case of any sons dying without leaving a wife *or* child or children." We do not think that the testator used the word "or," intending thereby to convey the same thought as would be expressed by "and." We concur with the Court of Appeals, speaking by Chief Justice Shephard, in holding that the words in question are unambiguous, and their obvious, ordinary meaning must not be defeated by conjecture. 25 *App. D. C.* 567, 576.

The important question remains whether James Travers, the son of the testator, died leaving a wife or a child or children. If he did, then the decree below must be affirmed.

The original bill averred that James Travers died in 1883 "without widow or lawful child or children or descendants of a child or children surviving him." This averment was not specifically denied in the answers, but in the progress of the cause the defendants, children of the sisters of James Travers, amended their answer and alleged that he left surviving him "his widow, Sophia V. Travers, now Sophia V. O'Brien, who was his lawful wife at the time of his death and who had been his lawful wife for many years prior thereto, and he left one child, Annie E. Travers, one of the defendants herein, who was his lawful child." The issue thus made constituted the principal matter to which the proof was directed. Both of the courts below held that under the evidence Sophia V. was to be deemed the lawful wife of James Travers at the time of his death. Children were born to them, but they died very young. It is conceded that they left no child surviving them, Annie E. Travers being only an adopted child.

The appellants insisted throughout the case and now insist that the relation between James Travers and Sophia V. was not at any time one of a matrimonial cohabitation, but an illicit or meretricious cohabitation, which did not create the relation of husband and wife.

Upon a careful scrutiny of all the evidence as to the alleged marriage we think that the following facts may be regarded as established:

1. James Travers, whose domicile was in the District of Columbia, and Sophia V. Grayson, whose domicil was in West Virginia, were in Alexandria together on the 15th of August 1865, when some sort of marriage ceremony (exactly what does not appear) was performed by a friend of Travers, whom the woman, then only about seventeen years of age, and without living parents, supposed at the time was a minister, entitled to officiate in that capacity at a marriage. She thought it was a real marriage by a minister, although he did not produce or have any license to solemnize the marriage of these parties. It must be taken upon the evidence that he was not a minister. By the statutes of Virginia then in force it was provided: "Every marriage in this State shall be under a license and solemnized in the manner herein provided, but no marriage solemnized by any persons professing to be authorized to solemnize the same shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of authority in such persons if the marriage be in all other respects lawful and be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage."

2. Immediately after the affair at Alexandria the parties—the woman, from and after that occasion, assuming the name of Mrs. Travers—left Virginia and went to Shrewsbury, New Jersey, where, as husband and wife,

they remained for a short time, after which they went to Belair, Harford County, Maryland, living there, as husband and wife, at a rented place.

3. In 1867 Travers purchased a farm in Talbot County, Maryland, on which he lived with said Sophia until some time in 1883, when that farm was sold, and, on account of Travers' health, they removed to Point Pleasant, New Jersey, and purchased property there, having lived on the Talbot County farm, as husband and wife, for more than fifteen years. Travers died at Point Pleasant in the latter part of the year 1883, and five years after his death the woman, claiming to be and recognized in the community as the widow of James Travers, married a lawyer of Philadelphia, the ceremony being performed at the Catholic Church in Point Pleasant.

4. From the 15th of August 1865 up to his death, on the 1st day of November 1883—a period of more than eighteen years—Travers and Mrs. Travers continuously cohabited *as husband and wife.* During all that period they acted as if they were lawfully husband and wife, and uniformly held themselves out as sustaining that relation; and beyond all question they were regarded as husband and wife in the several communities in which they lived after leaving Alexandria in 1865. There is no proof that any one coming in contact with them regarded them otherwise.

5. About five or six years after the latter date Mrs. Travers learned, for the first time, that Travers' "friend" who had officiated at the ceremony in Alexandria was not a minister. She was asked, when giving her deposition, this question: "Q. After you discovered, some four or five years after you went to live with Mr. Travers, that you had not been married to him according to any ceremony, did he ever make any promise to you in that regard? A. Always. Poor fellow, he would have it all right—— Mr. Birney. We object to that. Q. And what did he say? A. Well, he would always say that it was all right, and we were just as much married as if we had been married before a priest or a minister." Upon the basis of their being husband and wife the parties continuously rested their relations to each other up to the death of Travers.

6. That Travers recognized Mrs. Travers as his wife, and held her out as such, appears from many facts: (*a*) In a mortgage executed September 27th 1867, to secure the balance of the purchase money due on the Talbot County farm, the mortgagors are described, both in the body of the mortgage as "James Travers and Sophia V. Travers, his wife, of Harford County, in the State of Maryland, and in the certificate of acknowledgment as "James Travers and Sophia V. Travers, his wife," and she signed and acknowledged the mortgage as Sophia V. Travers. (*b*) By a mutilated, holographic will dated February 8th 1881, and signed by James Travers, he gave, devised and bequeathed "to my wife Sophy Vir-

ginia Travers," all his household furniture, books, pictures, etc., to have and to hold the same to her, and her executors, administrators and assigns forever; also, to her the use, improvement and income of his dwelling house and farm, "to have and to hold the same to her for and during her natural life; and from and after the decease of my said wife, I give and bequeath," etc.; and by which, further, he gave, devised and bequeathed "to my wife Sophy Virginia Travers, for her sole use," all the rest and residue of the testator's estate, real, personal or mixed, of which he died seized and possessed, or to which he should be entitled at the time of his decease. That will concluded: "Lastly, I do nominate and appoint my said wife sole executrix of this my last will and testament." (c) By a will dated at Point Pleasant, New Jersey, October 5th 1883, witnessed by three persons, James Travers devised to his brothers and sisters all his interest and property in the District of Columbia, and "to my wife, while she remains *my widow*, all my property of every description and character not hereinbefore disposed of with full power of disposition and alienation, provided, however, that in case our daughter survives her, that all the property not disposed of prior to *my wife's* decease shall be and become the property of our said daughter, and in the event of *my wife's* contracting *another* marriage, then, it is my will that she shall possess and enjoy as of her own right, only one-third of the property then remaining, and that the other two-thirds shall be invested and held in trust for my daughter Annie, and paid to her upon attaining her majority. . . I hereby appoint *my wife* Sole Executrix of this my last will and testament." That will was duly proven before the Surrogate of Ocean County, New Jersey, partly by Mrs. Travers, and that officer certified that "Sophia Virginia Travers of the county of Ocean, the executrix therein named, proved the same before me and she is duly authorized to take upon herself the administration of the estate of the testator agreeably to said will." That will was duly filed and recorded in the proper office in the District of Columbia.

In view of these facts, the question is whether the woman Sophia was to be deemed the lawful wife of James Travers at the time of his death in 1883. Marriage in fact, as distinguished from a ceremonial marriage, may be proven in various ways. Of course the best evidence of the exchange of marriage consent between the parties would come from those who were personally present when they mutually agreed to take each other as husband and wife, and to assume all the responsibilites of that relation. But a legal marriage may be established in other ways. It may be shown by what is called habit or repute. Referring to marriage at common law, Kent says: "The consent of the parties may be declared before a magistrate, or simply before witnesses, or subsequently confessed or acknowledged, or the marriage may even be inferred from continual cohab-

itation and reputation as husband and wife, except in cases of civil actions for adultery, or in public prosecutions for bigamy or adultery, when actual proof of the marriage is required." 2 *Kent.* (12*th ed.*) 88.

Naturally, the first inquiry must have reference to what occurred at Alexandria, Virginia, in 1865, when, as the woman supposed—in good faith, we think—that there was a real, valid marriage between her and James Travers. But we will assume for the purposes of this case only that that marriage was not a valid one under the laws of Virginia. We do this in deference to the decision of the Supreme Court of Appeals of Virginia in *Offield* v. *Davis*, 100 *Va.* 250, 263, in which that court, construing the above statute of that Commonwealth, held it to be mandatory, not directory, and had abrogated the common law in force in Virginia, and that no marriage or attempted marriage, if it took place there, would be held valid there, unless it be shown to have been under a license, and solemnized according to the statute of that Commonwealth. We will also assume, but only for the purposes of the present decision, and because of the earnest contentions of the plaintiffs in error, that cohabitation in Maryland, as husband and wife, for more than fifteen years, and the recognition of that relation in the communities where they resided in that State, did not entitle James Travers and the woman Sophia to be regarded in that State as lawfully husband and wife. We make this assumption also because it appears here that James Travers and Sophia V. Grayson did not become husband and wife in virtue of any religious ceremony, and because it has been decided by the Court of Appeals of Maryland that in that State "there cannot be a valid marriage without a religious ceremony," although "a marriage may be competently proved without the testimony of witnesses who were present at the ceremony." *Richardson* v. *Smith*, 80 *Md.* 89, 93. That court also said in the same case: "The law has wisely provided that marriage may be proved by general reputation, cohabitation and acknowledgment; when these exist, it will be inferred that a religious ceremony has taken place; and this proof will not be invalidated because evidence cannot be obtained of the time, place and manner of the celebration of the marriage. On this point we think it unnecessary to do more than quote from *Redgrave* v. *Redgrave*, 38 *Maryland*, 97: 'Where parties live together ostensibly as man and wife, demeaning themselves towards each other as such, and are received into society and treated by their friends and relations as having and being entitled to that status, the law will, in favor of morality and decency, presume that they have been legally married. 1 *Taylor's Ev., secs.* 140, 517; *Hervey* v. *Hervey*, 2 *W. Bl.* 877; *Goodman* v. *Goodman*, 28 *L. J. Ch.* 1; *Jewell* v. *Jewell*, 1 *How.* 219, 232. Indeed the most usual way of proving marriage, except in actions for criminal conversation and in prosecutions for bigamy, is by general reputation, cohabitation and acknowledgment. *Sellmnn* v. *Bowen*, 8 *Gill*

& John. 50; *Boone* v. *Purnell,* 28 *Md.* 607.'" We may refer, in this connection, to what the Supreme Court of the District of Columbia, speaking by Judge Merrick, who was learned in the law of Maryland, said in *Thomas* v. *Holtzman,* 18 *D. C.* 62, 66: "In the first place, it is not at all apparent that it ever was the law that a marriage *in facie de ecclesiæ* was necessary for the purpose of legitimating the issue. It is true that the Court of Appeals of Maryland in the last four or five years has decided that such was the law, but that decision is not binding upon us. It is laid down by Blackstone that a marriage *per verba de præsenti* without the intervention of a clergyman is a legitimate marriage. And both Story and Kent say that according to the universal understanding in this country a marriage *per verba de præsenti,* without the intervention of a clergyman, followed by cohabitation, makes a legitimate marriage."

In *Voorhees* v. *Voorhees,* 1 *Dick. Ch.* 411, 413, 414, the Court of Chancery of New Jersey said: "Two essentials of a valid marriage are capacity and consent. . . Marriage is a civil contract, and no ceremonial is indispensably requisite to its creation. A contract of marriage made *per verba de præsenti* amounts to an actual marriage and is valid," quoting *O'Gara* v. *Eisenlohr,* 38 *N. Y.* 296. In *Atlantic City* v. *Gordin,* 62 *N. J.* 394, 400, the New Jersey Court of Errors and Appeals said: "In the Voorhees case Vice Chancellor Van Fleet concedes that a contract of marriage made *per verba de præsenti* amounts to an actual marriage and is valid, and in the case of *Stevens* v. *Stevens,* 11 *Dick. Ch. Rep.* 488, Vice Chancellor Pitney declares the law on the subject to the same effect, citing abundant authority."

This brings us to consider what were the relations of these parties after selling the Maryland farm and after taking up their residence in New Jersey in 1883. That their cohabitation, as husband and wife, after 1865 and while they lived in Maryland, continued without change after they became domiciled in New Jersey and up to the death of James Travers; and that they held themselves out in New Jersey as lawfully husband and wife, and recognized themselves and were recognized in the community as sustaining that relation, is manifest from all the evidence and circumstances. It is impossible to explain their conduct towards each other while living in New Jersey upon any other theory than that they regarded each other as legally holding the matrimonial relation of husband and wife. It is true that no witness proves express words signifying an actual agreement or contract between the parties to live together as husband and wife. No witness heard them say, in words, in the presence of each other, "We have agreed to take each other as husband and wife, and live together as such." But their conduct towards each other, from the time they left Alexandria in 1865 up to the death of James Travers in 1883, admits

of no other interpretation than that they had agreed, from the outset, to be husband and wife. And that agreement, so far as this record shows, was faithfully kept up to the death of James Travers. When it is remembered that James Travers assured the woman Sophia that they were as much married as if they had been married by a priest or minister; that in his mortgage of 1867 she is described as his wife; that in the holographic will of 1881 he recognized her as his wife; that in his last will, made at his domicile in New Jersey, he referred to her as his wife, and devised by that will property to her while she remained his widow and did not contract another marriage; and that he made her the sole executrix of his will, describing her as his wife; when these facts are supplemented by the fact that they lived together, without intermission, in good faith, and openly, for more than eighteen years as husband and wife, nothing more is needed to show that he and the woman had mutually agreed to sustain the relation of husband and wife. Under the evidence in the cause they are to be held as having, prior to the death of James Travers, agreed *per verba de præsenti* to become husband and wife.

Did the law of New Jersey recognize them as husband and wife after they took up their residence in that State and lived together, in good faith, as husband and wife and were there recognized as such? Upon the authorities cited this question must be answered in the affirmative.

We are of opinion that even if the alleged marriage would have been regarded as invalid in Virginia for want of license, had the parties remained there, and invalid in Maryland for want of a religious ceremony, had they remained in that State, it was to be deemed a valid marriage in New Jersey after James Travers and the woman Sophia, as husband and wife, took up their permanent residence there and lived together in that relation, continuously, in good faith, and openly, up to the death of Travers—being regarded by themselves and in the community as husband and wife. Their conduct towards each other in the eye of the public, while in New Jersey, taken in connection with their previous association, was equivalent, in law, to a declaration by each that they did and during their joint lives were to occupy the relation of husband and wife. Such a declaration was as effective to establish the status of marriage in New Jersey as if it had been made in words of the present tense after they became domiciled in that State.

The views we have expressed find support in the authorities. In *Meister* v. *Moore*, 96 *U. S.* 76, 79, it was said that an informal marriage by contract *per verba de præsenti* constituted a marriage at common law, and that a statute simply requiring "all marriages to be entered into in the presence of a magistrate or clergyman, or that it be preceded by a license, or publication of banns, or be attested by witnesses," may be construed "as merely

directory, instead of being treated as destructive of a common law right to form the marriage relation by words of present assent."

In *Maryland* v. *Baldwin*, 112 *U. S.* 490, 494–5, the court said: "It is proper to say that, by the law of Pennsylvania, where, if at all, the parties were married, a marriage is a civil contract, and may be made *per verba de præsenti*, that is, by words in the present tense, without attending ceremonies, religious or civil. Such is also the law of many other States in the absence of statutory regulation. It is the doctrine of the common law. But where no such ceremonies are required, and no record is made to attest the marriage, some public recognition of it is necessary as evidence of its existence. The protection of the parties and their children and considerations of public policy require this public recognition; and it may be made in any way which can be seen and known by men, such as living together as man and wife, treating each other and speaking of each other in the presence of third parties as being in that relation, and declaring the relation in documents executed by them whilst living together, such as deeds, wills, and other formal instruments."

So in *Hoggan* v. *Craigie, Macl. & Rob.* 942, 965, in which Lord Chancellor Cranworth, referring to contracts of marriage *per verba de præsenti*, said: "It is not necessary to prove the contract itself; *it is sufficient if the facts of the case are such as to lead to satisfactory evidence of such a contract having taken place;* upon this principle the acknowledgment of the parties, their conduct towards each other, and the repute consequent upon it, may be sufficient to prove a marriage. . . Everything, therefore is pertinent and relevant in an inquiry like the present, which indicates the present or previous consent of the parties." Again, in *Campbell* v. *Campbell*, known as the *Breadalbane Case, L. R.* 1 *Sc. App.* 182, 192, 196, 211, Lord Chancellor Chelmsford said: "Habit and repute arises from parties cohabiting together openly and constantly, as if they were husband and wife, and so conducting themselves towards each other for such a length of time in the society or neighborhood of which they are members as to produce a general belief that they are really married." In the same case Lord Westbury, after observing that it might not be strictly correct to speak of cohabitation with habit and repute as a mode of contracting marriage, said: "It is rather a mode of making manifest to the world that tacit consent which the law will infer to have been already interchanged. If I were to express what I collect from the different opinions on the subject I should rather be inclined to express the rule in the following language: that cohabitation as husband and wife is a manifestation of the parties having consented to contract the relationship *inter se.* It is a holding forth to the world by the manner of daily life, by conduct, demeanor, and habit, that the man and woman who live together have agreed to take each other in mar-

riage and to stand in the mutual relation of husband and wife; and when credit is given by those among whom they live, by their relatives, neighbors, friends, and acquaintances, to these representations and this continued conduct, then habit and repute arise and attend upon the cohabitation. The parties are holden and reputed to be husband and wife; and the law of Scotland accepts this combination of circumstances as evidence that consent to marry has been lawfully interchanged." In his Treatise on *Domestic Relations*, Eversley says: "Marriage may also be proved between the parties by their conduct towards each other, and the first consent need not be proved; 'it is sufficient if the facts of the case are such as to lead to satisfactory evidence of such a contract having taken place; the acknowledgment of the parties, their conduct toward each other, and the repute consequent upon it, may be sufficient to prove a marriage.'" *p.* 41. See also 2 *Greenleaf on Evidence, (Harriman's edi.)* §§ 461, 462, *and notes;* 3 *Wigmore on Evidence,* §§ 2082, 2083, *and authorities cited.*

Without further discussion or citation of authorities, we adjudge that the courts below did not err in holding that, under the evidence, James Travers and the Mrs. Travers who lived with him constantly and openly as his wife for more than eighteen years, were, in law, to be deemed husband and wife at the time of his death, in New Jersey, in 1883. It results from this view that the decree of the Court of Appeals, affirming the decree of the Supreme Court of the District, must itself be affirmed.

It is so ordered.

Mr. Justice McKenna and Mr. Justice Moody did not participate in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 76.—October Term, 1906.

Amelia C. Travers et al., Appellants, vs. Maria L. Reinhardt et al. } Appeal from the Court of Appeals of the District of Columbia.

[April 15, 1907.]

Mr. Justice Holmes dissenting.

I feel some doubts in this case which I think that I ought to state. I understand it to be assumed, as it must be admitted, that James Travers and Sophia V. Grayson lived together for many years, calling themselves man and wife, when they were not man and wife and probably knew that they were not man and wife. This condition of things lasted from 1865, the time of the pretended marriage in Virginia to which their cohabitation referred for its justification, until 1883, the year of James Travers' death. So long as they lived in Maryland, that is until some time in 1883, if they had attempted to make their union more legitimate by simple mutual agreement they could not have done it. Therefore the instances of James Travers calling Sophia his wife during that period may be laid on one side.

Just before he died Travers moved to New Jersey and there made his will. As in Maryland, he spoke of his wife in that instrument, and as I understand it, the decision that he was married must rest wholly on this recognition and the fact that in New Jersey a marriage may be made without the intervention of a magistrate. I do not see how these facts can be enough. Habit and repute might be evidence of a marriage when unexplained. But they must be evidence of a contract, however informal, to have any effect. When an appellation shown to have been used for nearly eighteen years with conscious want of justification continues to be used for the last month of lifetime, I do not see how the fact that the parties have crossed a State line can make that last month's use evidence that in that last moment the parties made a contract which then for the first time they could have made in this way.

It is imperative that a contract should have been made in New Jersey. Therefore even if both parties had supposed that they were married instead of knowing the contrary it would not have mattered. To live in New Jersey and think you are married does not constitute a marriage by the

law of that State. If there were nothing else in the case it might be evi-

law of that State. If there were nothing else in the case it might be evidence of marriage, but on these facts the belief, if it was entertained, referred to the original inadequate ground. *Collins* v. *Voorhees*, 47 N. J. Eq. 555. A void contract is not made over again or validated by being acted upon at a time when a valid contract could be made. When a void contract is acted upon, the remedy, when there is one, is not on the contract, but upon a quasi-contract, for a *quantum meruit*. There is no such alternative when a marriage fails.

True copy.

Test:

Clerk Supreme Court, U. S.